

Before the
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In the matter of:

Distribution of the
1998 and 1999 Cable
Royalty Funds

Docket No.
2001-8 CARP CD 98-99

Room LM-414
Library of Congress
First and Independence Ave. S.E.
Washington, D.C. 20540

Thursday,
May 8, 2003

The above-entitled matter came on for hearing,
pursuant to notice, at 9:00 a.m.

BEFORE:

THE HONORABLE CURTIS E. Von KANN
THE HONORABLE JEFFREY S. GULIN
THE HONORABLE MICHAEL D. YOUNG

Chairman
Arbitrator
Arbitrator

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P-R-O-C-E-E-D-I-N-G-S

(9:07 a.m.)

JUDGE VON KANN: I assume we can proceed.

MR. WINTERS: Well, I wouldn't expect him to be much later.

JUDGE VON KANN: Is he the one who is going to do the cross?

MR. WINTERS: Yes, he is.

JUDGE VON KANN: Why don't we give him five minutes? How long do you expect to be on direct?

MR. STEWART: I think half an hour or less perhaps.

JUDGE VON KANN: Oh, yes. Mr. Olaniran, have you reached a judgment as to DeFranco, whether you would waive cross if they waived direct or --

MR. OLANIRAN: Yes, Your Honor, I have reached a decision. I would like to --

JUDGE VON KANN: We are all waiting with bated breath.

MR. OLANIRAN: I would like to have a brief conversation with Mr. DeFranco.

JUDGE VON KANN: You would like to have

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1 one? All right. Well, we'll work it in.

2 JUDGE YOUNG: Should we ask you how you
3 define "brief"?

4 (Laughter.)

5 JUDGE VON KANN: Maybe we will define
6 "brief." It might be better.

7 MR. OLANIRAN: Hopefully not more than
8 half an hour, just a couple of questions.

9 JUDGE VON KANN: Did anybody find any --
10 I guess we've signed it, haven't we, the order. We
11 asked you before if you had any problems with the
12 order, and you said no. And we signed it. So that's
13 that.

14 Any other administerial, administrative,
15 whatever it is, fill in the gap kind of moments,
16 issues, matters? No?

17 (No response.)

18 JUDGE VON KANN: Okay. Why don't we wait
19 a few minutes for Mr. Garrett? Hopefully he will make
20 it. I guess maybe if by 9:15 or so he hasn't, I would
21 be inclined to start. And you can bring him up to
22 date. The direct, of course, has been submitted in

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1 advance. So this is hopefully great news. But let's
2 give him a few minutes. Okay?

3 (Whereupon, the foregoing matter went off
4 the record at 9:10 a.m. and went back on
5 the record at 9:16 a.m.)

6 MR. STEWART: Commercial calls as its next
7 witness Marcellus Alexander.

8 JUDGE VON KANN: Okay.

9 The REPORTER: Raise your right hand,
10 please.

11 Whereupon,

12 MARCELLUS ALEXANDER

13 was called as a witness by counsel for the National
14 Association of Broadcasters and, having been first
15 duly sworn, was examined and testified as follows:

16 The REPORTER: Thank you.

17 DIRECT EXAMINATION

18 BY MR. STEWART:

19 Q What is your name?

20 A Marcellus Alexander.

21 Q Mr. Alexander, what is your current
22 position?

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1 A Executive vice president, television for
2 the NAB.

3 Q How long have you had that position?

4 A About seven months.

5 Q What are your responsibilities as
6 executive vice president for television?

7 A Primary responsibilities are to bring the
8 television operator perspective to the NAB as we
9 discuss issues and our position on issues; in addition
10 to that, staying in touch with and working with
11 television group executives to understand how those
12 issues might change and what their challenges might be
13 that we might be able to help with.

14 And the final piece of primary
15 responsibility is our department produces conferences
16 and seminars for the benefit of broadcasters around
17 the country.

18 Q Have you also worked in television?

19 A Yes.

20 JUDGE VON KANN: Can I pause for the NAB
21 a second? I would be grateful for like a one-minute
22 primer on the NAB. You know, we have heard some

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1 testimony I think that some stations belong and some
2 don't. I'd like some sense of how many stations
3 belong, what percentage of the universe that is in a
4 general way, you know, sort of what does the NAB do
5 and how does it operate. I need sort of the executive
6 summary kind of version of that.

7 THE WITNESS: Let me attempt to give you
8 that. First of all, the NAB is, of course, a trade
9 organization that represents the broadcast industry,
10 radio and television in Congress, in front of the FCC,
11 and in the courts.

12 Our member stations are small market as
13 well as large market, networks as well as
14 non-networks, many diverse interests that make up that
15 membership base.

16 All stations are not members. I don't
17 have off the top of my head the percentage of stations
18 that are, but it is a very well-respected, effective
19 organization on behalf of the broadcast industry.

20 It's based here in Washington, D.C., of
21 course.

22 JUDGE VON KANN: Does a station become a

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1 member by paying dues or something and signing up? Is
2 that how it works?

3 THE WITNESS: Yes. They have to be a
4 full-power television or radio station first. And
5 then there are dues that they are assessed to be
6 members.

7 JUDGE VON KANN: Do you think it's fair to
8 say that you represent the majority of television
9 stations in the --

10 THE WITNESS: I think it's fair to say
11 that, yes.

12 JUDGE VON KANN: Both TV and radio?

13 THE WITNESS: That's correct.

14 JUDGE VON KANN: How does the NAB arrive
15 at positions on things? Are there great conferences
16 where all the members can come and put in their two
17 cents or what's the sort of mechanism for -- we have
18 had, for example, submissions that you have made to
19 the FCC. When you decide what position you are going
20 to take before the FCC or Congress or else wise, how
21 does that get decided?

22 THE WITNESS: The NAB has a board of

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1 directors, which is made up of representatives of the
2 stations and station groups, who make up the
3 membership. That board of directors in conjunction
4 with our staff forms positions on issues. And then it
5 is a board decision as to the final position that we
6 will take. The NAB then executes that position.

7 JUDGE VON KANN: Are the directors elected
8 by the members?

9 THE WITNESS: That is correct, yes.

10 JUDGE VON KANN: Okay.

11 BY MR. STEWART:

12 Q You have only been there seven months. Do
13 you know whether, say, every rulemaking comment filed
14 by the NAB at the FCC is voted on by the board?

15 A There are committees that come from the
16 board of directors, various committee that deal with
17 separate issues. And the NAB filings will always have
18 input and approval, if you will, from those
19 committees, if not from bigger issues from the actual
20 board of directors.

21 Q Now, at what stations did you work?

22 A I worked at KYWT most recently and WJZ TV

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1 in Baltimore prior to that.

2 Q How long did you work at WJZ?

3 A About nine years.

4 Q Turning to 1998, what was your position at
5 WJZ that year?

6 A I was vice president and general manager.

7 Q What were your responsibilities as vice
8 president and general manager?

9 A The responsibility of vice president and
10 general manager is generally overall before the
11 overall operation of the station. We had the -- I had
12 the responsibility -- excuse me -- of the news
13 product, the marketing of the product. The bottom
14 line, it is the manager of the entire product and
15 property, if you will.

16 JUDGE YOUNG: I'm sorry? Did you say news
17 product?

18 THE WITNESS: News product. It was under
19 my jurisdiction, yes.

20 JUDGE YOUNG: As well as everything else?

21 THE WITNESS: That is correct. That is
22 correct.

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1 JUDGE YOUNG: You were using news product
2 as an example?

3 THE WITNESS: Of those, one of those items
4 under my jurisdiction, yes. But generally if I could
5 say it in an overriding fashion, Judge, the
6 responsibility for the business of KYW TV in
7 Philadelphia, WJZ TV in Baltimore.

8 JUDGE YOUNG: For the P&L?

9 THE WITNESS: P&L. That's correct.

10 BY MR. STEWART:

11 Q So in 1999, you were at KYW?

12 A That's correct.

13 Q Did you have the same position there?

14 A Yes, I did.

15 JUDGE YOUNG: KYW Philadelphia was CBS, I
16 know.

17 THE WITNESS: In the year that we are
18 referring to, it was CBS. Prior to that, it had been
19 an NBC affiliate. It was one of the stations that
20 switched affiliates.

21 JUDGE YOUNG: The '98-'99, CBS?

22 THE WITNESS: That is correct.

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1 JUDGE YOUNG: And WJZ?

2 THE WITNESS: Was CBS also at that time.
3 Prior to it, it had been an ABC affiliate.

4 JUDGE YOUNG: Do stations change their
5 affiliations regularly?

6 THE WITNESS: Not regularly. There was an
7 event that caused a domino effect on affiliations a
8 few years back, but it is not generally. It is not a
9 general practice of stations, routine to change
10 affiliations, no.

11 BY MR. STEWART:

12 Q Who owns KYW and WJZ?

13 A Viacom owns both those.

14 Q And Viacom also owns the CBS network. Is
15 that right?

16 A That is correct.

17 Q Would you turn to the document that is
18 entitled "Statement of Marcellus Alexander, Jr."?

19 JUDGE VON KANN: That raises a kind of an
20 interesting issue. I don't want to spend too much
21 time on it. And don't go beyond your knowledge, but
22 we certainly are aware that there seems to be

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1 increasing concentration in some ways within the media
2 industry in various ways.

3 I think somewhere in the materials, I saw
4 some indication that if you took all of the TV
5 stations in the country, you would find a very
6 significant percentage were owned by two or three or
7 four large entities like Viacom. I've forgotten what
8 some of the others were. Who are the large players in
9 the ownership of TV stations around the country?

10 THE WITNESS: It would be the networks,
11 Viacom, NBC, ABC, Belo Broadcasting.

12 JUDGE VON KANN: Who?

13 THE WITNESS: Belo, B-e-l-o-w.

14 JUDGE VON KANN: No w.

15 THE WITNESS: I'm sorry. B-e-l-o. You're
16 right. I'm sorry.

17 JUDGE VON KANN: Okay.

18 THE WITNESS: Tribune also owns a sizeable
19 number of television stations.

20 JUDGE VON KANN: AOL Time-Warner. Is that
21 in here?

22 THE WITNESS: No.

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1 JUDGE VON KANN: But it's affiliated with
2 one of the networks, isn't it? Am I misremembering
3 that?

4 THE WITNESS: Cable is their primary
5 affiliation.

6 JUDGE VON KANN: How about Disney?

7 THE WITNESS: Disney is ABC. Yes. I'm
8 sorry. It was actually the Disney Company, as opposed
9 to ABC.

10 JUDGE VON KANN: And in my past life, I
11 learned about such entities as Clear Channel, who
12 films a lot of radio stations. Do they also own a lot
13 of TV stations?

14 THE WITNESS: They own television stations
15 but not nearly as many as their radio holdings.

16 JUDGE VON KANN: And I think there was
17 Sequoia or Susquehanna. Is that --

18 THE WITNESS: Susquehanna also owns radio
19 stations and a few television stations.

20 JUDGE VON KANN: Do you have any sense --
21 and I don't want you to guess about this if you don't,
22 but if we lined up all of the TV stations, do you have

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1 March 22nd, do you see that?

2 A Yes.

3 Q Now, was that some type of error?

4 A It appears it is.

5 Q Okay.

6 A Because that's a Sunday.

7 Q So do you know which date is supposed to
8 be -- is this supposed to be Saturday, March 21st, or
9 Sunday, March 22nd?

10 A I would believe it would be Saturday,
11 March 21st.

12 Q Okay. Did you purposely pick July 4th?

13 A Nope.

14 Q It just happened?

15 A Yep.

16 Q Did you purposely pick --

17 A July 4, 1992, you mean?

18 Q I'm referring to July 4, 1992. Thank you.
19 That happened at random, correct?

20 A Yes.

21 Q Okay. What about November 26th? That
22 would be Thanksgiving.

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1 A Yes.

2 Q That happened by random, too?

3 A Yes.

4 Q You're aware, are you not, that
5 programming for holidays generally are not the norm in
6 terms of what programming is on air for the -- during
7 the course of the year, are you aware of that?

8 A I believe there are special holiday
9 programming.

10 Q Okay. Such as the Macy's Thanksgiving
11 Parade, for example?

12 A That's one program on Thanksgiving Day.

13 Q And there may also very well be other
14 programming for the Independence Day celebration.

15 A Correct.

16 Q Okay.

17 JUDGE VON KANN: Let me just ask, on those
18 two, it would seem to me probably that if you were --
19 if there was something -- if one were trying to pick
20 holidays here to help anybody, it would seem to me it
21 would probably help the other claimants more than
22 commercial TV.

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1 I would assume there's probably less local
2 broadcasting, because it's supplanted by Thanksgiving
3 Day parades and football games and the special on the
4 -- you know, the mall, and so on. My assumption is
5 that probably on holidays that squeezes out some of
6 the amount of programming that's sort of normally
7 available for a local broadcast. I don't know if
8 that's true or not, but --

9 THE WITNESS: I didn't actually quantify
10 that, but it's my understanding that on those days,
11 just as an ordinary TV consumer, that there are a lot
12 more network programming on, and, as you suggest, more
13 football and other specials that are syndicated.

14 JUDGE VON KANN: Okay.

15 BY MR. OLANIRAN:

16 Q And if that were the case, though, that
17 would make the sample less representative, would it
18 not?

19 A No. I wanted to point out that --
20 remember, there are holidays throughout the entire
21 year, and invariably if you want to have a sample that
22 represents the entire year you must have -- not must

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1 -- but it's not a bad thing in your random sample to
2 have holidays that are part of your sample.

3 Q Well, let's go through the rest of the
4 dates.

5 A Okay.

6 Q Let's look at July 4, 1999. Was that also
7 a random selection?

8 A Yes.

9 Q Now, let me make sure I understand what
10 you're calling a random selection. After you have
11 decided that you want a particular day of the week,
12 and that you instruct the computer and the computer
13 comes up with a particular date for you, is that --

14 A It comes up with a number for --

15 Q With a number.

16 A -- one through five, and then I went to
17 the calendar sometimes erroneously marking the date.

18 Q Okay. Now, you said one through five.
19 Not one through seven?

20 A No, because there can only be five days of
21 any month -- in any one month. There are not seven
22 Fridays in any month. See, remember, I'm picking the

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1 first -- either the first, second, third, fourth, or
2 in some cases fifth, day of the week of a month.

3 JUDGE YOUNG: What if it came up with
4 number five in a month where there's only four
5 Mondays?

6 THE WITNESS: I then went to the next
7 random number.

8 JUDGE YOUNG: Okay.

9 BY MR. OLANIRAN:

10 Q So now, through '99, we've picked two
11 July 4ths by random in three years -- in two years,
12 right?

13 A In '99 --

14 Q You picked Monday, the 5th.

15 A Yes.

16 Q Of July.

17 A Right.

18 Q Now, do you know whether or not that was
19 the July 4th holiday for that year?

20 A At that point in time, it -- well, I -- I
21 can look very quickly and see if that was part of that
22 weekend.

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1 Q So assuming that that was the --

2 A Do you want me to answer that or no?

3 Q Oh, go ahead. I'm sorry.

4 A It happened to be the Monday after the 4th
5 was on Sunday.

6 Q So that would be a holiday, would it not?

7 A I recall having the day off, yes.

8 Q Okay. Now, and that would be another day
9 that the programming would differ from the norm,
10 correct?

11 A I don't have any reason to believe that.

12 Q I thought you just indicated to Judge von
13 Kann that indeed there may be some skewing of the
14 program on the holidays toward some claimant category
15 or --

16 A I think the Judge was talking specifically
17 about Thanksgiving Day and July 4th, the day, not
18 necessarily a Monday that makes it a three-day
19 weekend.

20 Q Okay. In 1999, you also picked
21 January 18th.

22 A Yes.

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1 Q Would that have been the Martin Luther
2 King holiday?

3 A I'm not -- since my calendar didn't note
4 that, when Martin Luther King Day was that year, I
5 don't know if that's true or not.

6 Q Okay. May 31st of 1999, would that have
7 been Memorial Day holiday?

8 A I believe it was, though it's not noted on
9 my calendar, but I do believe that the last Monday of
10 May is Memorial Day.

11 Q So was that also random?

12 A Yes.

13 Q Okay. And so was the January 18, 1999?

14 A Yes, it was.

15 Q Okay. What about Labor -- I'm sorry, what
16 about September 6th of 1999?

17 A That, too, was Labor Day, and that was
18 randomly selected.

19 Q Do you have any idea how many major
20 holidays there are in a year?

21 A I believe, because I worked -- I believe
22 there are -- well, actually, in your definition of

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1 "major," but I believe there are 10 or 11 holidays
2 that federal employees get off. And I'm not sure if
3 that's your definition of major.

4 Q Well, let's assume that definition, and
5 that would be 10 out of 365 days?

6 A That's correct.

7 Q And that's about what, percentage-wise?
8 My math is terrible.

9 A Ten divided by 365, so it's around two and
10 a half percent.

11 Q So you picked a sample of 84 days?

12 A Correct.

13 Q And of the 84 days, you have about -- I
14 counted about eight holidays, is that correct?

15 A In the '98-'99 time period?

16 Q Yes. Or is that seven?

17 A I count none in 1998. But you can?

18 Q That's about what I have also, yes.

19 A Okay. I have none in '98, and one, two --
20 are you counting the 4th and 5th as holidays?

21 Q I would count that --

22 A Okay.

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1 Q Let's count that as one.

2 A Three, four -- as one?

3 Q As one day as opposed to two.

4 A Okay. So we've got one, two, three, four,
5 I count five in 1998-1999.

6 Q Okay. And that comes to a total of?

7 A Zero for 1998 and five for 1999.

8 Q Which five did you have?

9 A Okay. I thought we should do this out
10 loud. January 18th, Martin Luther King Day; Monday,
11 May 31st; the 4th and 5th was counted as one; and
12 Labor Day was the 6th -- so that's four; and that was
13 it. Did I miss one?

14 Q Thanksgiving was in '92.

15 A '92.

16 Q That's correct.

17 A So I have, what, four?

18 Q So four out of 42, and that would be
19 approximately 10 percent of the sample that you
20 picked, right?

21 A I would characterize it four out of 84,
22 because I am analyzing '98 and '99 together, and so

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1 that gets to four or five percent.

2 Q Now, assuming that it's five percent,
3 doesn't that suggest to you that this sample is not
4 representative of the entire year?

5 A No.

6 Q And why is that?

7 A Because it was randomly selected, and it
8 doesn't seem the difference between two and a half
9 percent versus four or five percent would be
10 drastically different to alter my conclusion that it's
11 a representative sample.

12 Q Okay. And this is the dates that we can
13 project for the entire year?

14 A Yes.

15 Q But you didn't calculate the minutes for
16 a full year, did you?

17 A I actually calculated the minutes for each
18 half -- for each six-month period, and for each six --

19 Q And you averaged the results for each --
20 for each two accounting periods, correct?

21 A I averaged every two accounting periods
22 for 1992, and I averaged across the four accounting

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1 periods for 1998-1999.

2 Q Do you know if the averaging affects the
3 ability to project results for the entire year?

4 A The entire two years?

5 Q Yes.

6 A I don't believe it does.

7 Q And do you know whether or not it affects
8 the representativeness of the results?

9 A I don't believe it does.

10 Q And you maintain this view even though you
11 only selected certain dates to fit your every week of
12 -- every day of the week pattern, and even though the
13 holidays would appear to be overrepresented?

14 A I would agree with the fact that I
15 maintain that position, but I don't believe that I
16 would characterize it that it was overrepresented.

17 Q I want to shift gears a little bit, and I
18 want to talk to you about the actual data that you
19 used in your studies. You provided us with a disk.
20 I think initially you provided us with disks 1 and 2,
21 and I believe later on the disks were corrected and --
22 I'm sorry, the data was corrected, and then there was

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1 a replacement disk that was provided?

2 A I believe that was the case.

3 Q Okay. Now, if one wanted to calculate the
4 total program minutes, how would you do that before
5 doing the weighting?

6 A The program minutes by category or total
7 program minutes of each individual station?

8 Q Let's talk with total program minutes.

9 A Total program category minutes?

10 Q No, not -- just bottom line total.

11 A Let me also ask you, just to clarify, do
12 you mean the total program minutes that were part of
13 the final analysis, or are you talking about the total
14 program minutes that were part of the full day's
15 schedule before I took out the network programming?

16 Q When I refer to program minutes, I am
17 referring to non-network, what would be deemed
18 compensable for the purposes of this proceeding.

19 A One could take the -- several files that
20 I have put on those disks to -- and sum them across
21 the stations, making sure that you took the non-
22 network program table, and sum them across by call

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1 letters, by channel number.

2 Q Now, do you have JSC Exhibit 6-X in front
3 of you?

4 A Yes.

5 Q Would you mind turning to page 9 of that
6 exhibit?

7 A Yes.

8 Q Have you had a chance to review that?

9 A Yes.

10 Q Now, you refer there to total number of
11 unweighted minutes of programming that was -- that was
12 calculated for -- or calculated input for the purpose
13 of a separate regression analysis. What are you
14 referring to when you say total unweighted minutes?

15 A Total minutes of programming by category
16 for the station, without applying any weights that are
17 attributable to the amount of carriage on cable
18 systems -- their distant signals.

19 Q Is there some way to illustrate that
20 they're not -- I'm not quite clear. Do you go through
21 all of the stations? Do you aggregate all of the
22 minutes? Correct?

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1 A Well, I went through all of the programs,
2 and I allocated them to program types.

3 Q Okay.

4 A And then I summed them by station and
5 program -- by program type.

6 Q Do you make a distinction between what you
7 describe as unweighted minutes and the minutes of
8 programming that was available on the stations?

9 A Yes, because the minutes of programming
10 available on the stations include the network
11 programming.

12 Q What I meant was, do you make a
13 distinction between program unweighted minutes, as
14 you've described them, and still in the context of
15 non-network programming that was made available as a
16 distant signal?

17 A No, I don't make any distinction between
18 that.

19 Q So that if you looked at -- if you looked
20 at, say -- let's assume hypothetically that there were
21 -- that we have System A and System B. And let's
22 assume, further, that System A carried WGN, and let's

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1 assume that the total program minutes on WGN was
2 100 minutes. Let's assume also that System B carried
3 WGN, and let's assume, again, that the total program
4 minutes for WGN was 100 minutes.

5 Now, if I asked you, what were the total
6 program minutes -- and let's assume that WGN is the
7 only distant signal for that particular year -- and if
8 I asked you, what are the total minutes for -- total
9 program minutes for that year, what would the answer
10 be?

11 A For WGN, it would be 100 minutes.

12 Q And using that concept, would that have
13 been -- is that what you consider unweighted minutes?

14 A Yes.

15 Q What if there were two systems? What if
16 -- let's say System A, again -- if you need to write,
17 please feel free.

18 A I was about to, but I was following that,
19 so --

20 Q Let's assume --

21 A There may be a point that we may have to
22 stop and --

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1 Q I honestly just want to clarify exactly
2 what we're talking about when we say --

3 A Sure. Go on.

4 Q Let's say System A carries WGN and, let's
5 say, KABC. And System A, again, 150 minutes, WGN has
6 100, KABC has 50. And let's assume --

7 A Now we're going to -- I can write on these
8 exhibits, can't I? Go again. I'm sorry.

9 Q System A, WGN and KABC, WGN total minutes
10 100, and KABC 50. Okay? And System B carries the
11 same stations and the same number of minutes,
12 respectively.

13 A Right.

14 Q Now, unweighted minutes, as you describe
15 it, would be what?

16 A For WGN, because the unit of analysis is
17 the station, would be 100.

18 Q What about for the system?

19 A I'm not sure what you mean by "for the
20 system." The system isn't the one that is airing the
21 programming.

22 Q Now, if you had -- in terms of unweighted

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1 minutes that were provided to Dr. Rosston, what would
2 have been the information that you provided to Dr.
3 Rosston, based on the example I just gave you?

4 A I would have provided to Dr. Rosston, WGN,
5 100 minutes. Now, obviously, it would have been by
6 different program category, but in this simple example
7 that's what I would have provided to him.

8 Q Okay. And then it would have been --

9 A 50.

10 Q -- 50.

11 A Yes.

12 Q Okay. If we assumed -- do you have a
13 calculator?

14 A Not on me.

15 Q Okay.

16 A Thank you.

17 Q Okay. If we assumed that there were 24
18 hours of program time on all of the programs that were
19 carried --

20 A On all of the stations that were carried.

21 Q On all of the stations that you studied,
22 and that would include the commercial stations, low

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1 power, Canadian, all of the stations. Okay?

2 A Correct.

3 Q Let's assume 24 hours of programming on
4 each and that you would have given Dr. Rosston 84 days
5 worth of program time, is that correct?

6 A For 1998-'99, right.

7 Q Correct. And in terms of total minutes,
8 is there a way to calculate that? Just assuming --
9 I'm sorry, let me give you one more number.

10 A Yes.

11 Q Assume that the total number of
12 stations --

13 A Yes, that's the key.

14 Q -- were 1,498. And if you had to provide
15 Dr. Rosston with programming minutes, how would you do
16 that?

17 JUDGE YOUNG: Compensable program minutes?

18 MR. OLANIRAN: Compensable program
19 minutes. Thank you.

20 THE WITNESS: Well, you made the
21 assumption that all 24 hours are --

22 MR. OLANIRAN: Correct.

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1 JUDGE YOUNG: All 24 hours is compensable.

2 MR. OLANIRAN: Yes.

3 THE WITNESS: The local commercial
4 television stations would have been divided -- would
5 have been -- the programming on those 24 hours would
6 have been categorized by the different program
7 categories, and then I would have added those,
8 associating that with the classification of what
9 category.

10 I would have added those minutes and
11 provided Dr. Rosston, by call letters, total minutes,
12 maybe three or four categories per station, and then
13 for those -- each six-month period. I wouldn't have
14 had it over the 84 days. I would have had it in the
15 six-month -- each six-month quadrant, each six-month
16 period.

17 BY MR. OLANIRAN:

18 Q Let's assume -- I'm sorry. Were you
19 finished?

20 A Yes, I was.

21 Q Okay. Let's assume we're working with
22 total minutes. Would you have calculated it this way?

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1 Would you have multiplied the 84 days by 24 hours a
2 day? Okay? Are you with me?

3 A Yes.

4 Q By 60 minutes per hour, by the number of
5 stations, which is 1,498.

6 A Assuming that all 24 -- all 1,498 stations
7 were on 24 hours, and all 24 hours were compensable
8 programming, that would have been the maximum. That's
9 now how I did it.

10 Q Okay. I realize that this is just a
11 hypothetical. And could you quickly -- do you have
12 the calculator in front of you?

13 A I've got the calculator right here.

14 Q Let's do 84 times 24 times 60 times 1,498.

15 A Unfortunately, this calculator is giving
16 me an error message, because the number is so large.

17 Q The number is too big?

18 MR. STEWART: I got this calculator for
19 these proceedings, because they're always dealing in
20 hundreds of millions.

21 THE WITNESS: Okay. I have a number.

22 BY MR. OLANIRAN:

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1 Q Okay.

2 A Do you want to know it?

3 Q I'm listening.

4 A Oh, I'm sorry. 181,198,080.

5 Q So if --

6 JUDGE VON KANN: Does his number agree
7 with your number?

8 MR. OLANIRAN: Yes, it does.

9 JUDGE VON KANN: Oh.

10 (Laughter.)

11 You're making beautiful music.

12 (Laughter.)

13 BY MR. OLANIRAN:

14 Q So that if all of the time on the stations
15 that you studied, and assuming, again, that 14 -- that
16 you studied 1,498 stations -- if all of the time on
17 those stations had been compensable, the total
18 unweighted minutes you would have given to Dr. Rosston
19 would have been the 181 million you just calculated?

20 A If I did it that way, yes.

21 Q Okay. Did you not do it that way?

22 A No. As I enumerate in my testimony, I do

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1 it by looking at each half-year, and it's all -- and
2 it just -- it's just the ones that are -- they weren't
3 24 hours, and they were --

4 Q I understand the -- let's assume that --
5 I'm trying to get an out of boundary --

6 A Right.

7 Q -- of the total minutes that you would
8 have provided Dr. Rosston.

9 A That's the maximum possible --

10 Q Would have been 181 million.

11 A Plus a few.

12 Q Okay. But, in reality, what you gave him
13 would have been less.

14 A Correct.

15 Q Because you did not study 24 hours --
16 because not 24 hours was compensable for each of the
17 stations that you studied.

18 A Right. I did study 24 hours.

19 Q Okay. Now, you indicated that you
20 weighted the minutes by subscribers. Exactly how did
21 you do that?

22 A I had the total number of distant signal

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1 subscribers for each six-month period for each call
2 letters. I had the total number of distant signal
3 subscribers for each month, each six-month period. I
4 divided by the stations total, divided by the total
5 number of distant signal subscribers, and that's the
6 weight that each station had.

7 Q How did you decide on using this -- on
8 weighting by subscribers?

9 A I wanted to get the most representative
10 picture, analysis, of the distant signal subscriber --
11 the programming available to the distant signal
12 subscribers.

13 Q And did you have any help in coming up
14 with subscriber as a weighting factor?

15 A I discussed it with counsel, but I -- I'm
16 not sure if he helped me.

17 Q Okay. I certainly don't want to break a
18 privileged communication. Did you discuss it with Dr.
19 Ducey?

20 A I had some discussion in the design of the
21 sample -- of the procedure with Dr. Ducey.

22 Q Now, but you did not discuss subscriber

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1 weighting with him?

2 A I may have told him that -- the way I was
3 going to weight the cable subscribers, the -- not
4 cable subscribers, the various stations, distant
5 signal stations.

6 Q Now, you indicated yesterday that this is
7 the first time you've done a study of this type,
8 right?

9 A Distant signal subscribers, yes.

10 Q Of program time on distant signals.

11 A Yes.

12 Q And prior to this experience, you really
13 don't have -- didn't have any other experience doing
14 an analysis like this, correct?

15 A How specific do you mean by the phrase "an
16 analysis like this"?

17 Q This is the first time you have done a
18 program time study on distant signals, correct?

19 A That is correct.

20 Q Okay. Did you consider any other
21 weighting factors?

22 A No, I didn't.

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1 Q And why did you not?

2 A Because I think the weighting factor that
3 I selected would lead to the most representative
4 analysis/picture of the distant -- programming
5 available to distant signal subscribers.

6 Q And what did you rely on for that
7 decision?

8 A My understanding of the television
9 marketplace, my education, and my experience.

10 Q Okay. Did you consider using fees
11 generated by station types?

12 A No, I did not consider that.

13 Q Did you know if such a thing even existed
14 prior to commencing your study?

15 A Fees generated per station? I thought
16 there was. I think I remember that there were.

17 Q Actually, I said fees generated by station
18 types.

19 A By station types?

20 Q Such as networks, independents,
21 educational, etcetera, etcetera.

22 A No, I wasn't aware of that. Found that

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1 out just now.

2 Q Now, on page 12 of -- let me make sure I
3 get this right.

4 JUDGE YOUNG: When you use the word
5 "fees," are you referring to royalties?

6 MR. OLANIRAN: Royalty fees. I apologize.
7 It's sort of common lingo. Fees gen usually -- we use
8 it to refer to fees generated, meaning the fees that
9 were paid to the Copyright Office by the various
10 systems.

11 JUDGE YOUNG: So you're talking about fees
12 paid -- royalties paid into the fund --

13 MR. OLANIRAN: Yes.

14 JUDGE YOUNG: -- by the various systems
15 that carry the distant signal for the particular
16 station.

17 MR. OLANIRAN: Right. And one of the --
18 at the risk of attempting to testify -- and you will
19 hear from a witness who actually is an employee of
20 Cable Data, and she would explain to you exactly how
21 to calculate various things such as subscriber
22 instances of carriage, how to allocate fees generated

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1 to the various station types, and so on and so forth.

2 JUDGE YOUNG: Okay. Did you understand
3 that to be what this meant?

4 THE WITNESS: Yes.

5 JUDGE YOUNG: Thank you.

6 BY MR. OLANIRAN:

7 Q Now, I'd like to direct your attention to
8 page 12 of NAB Exhibit 12 -- I'm sorry, NAB
9 Exhibit 10. Now, I want to focus on the last -- on
10 the second paragraph and the last sentence in that
11 paragraph. Do you see that?

12 A Yes.

13 Q Could you read that, please?

14 A These values, referring to the
15 calculations of the weight, provide each station's
16 relative contribution to the total distant signal
17 marketplace for each of the six half-year periods.

18 Q Now, what do you rely on to conclude that
19 they provide each station's relative contribution to
20 the total distant signal marketplace?

21 A What I was referring to there was the
22 station's availability to the entire universe of

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1 distant signal subscribers.

2 Q So when you refer to the distant signal
3 marketplace, that is what you're referring to?

4 A In this context, yes.

5 Q Let me give you a hypothetical.

6 A I've got my pen ready.

7 Q Okay. Now, if there are only two cable
8 systems in the distant signal marketplace, and each
9 has 10,000 subscribers -- are you with me?

10 A Yes.

11 Q Now, would you say each system's
12 contribution was 50 percent to the distant signal
13 marketplace?

14 A No, not without additional information.

15 Q What additional information would you
16 need?

17 A How many distant signals were aired on
18 those two systems.

19 Q One.

20 A On each one?

21 Q Yes.

22 A Then my answer is different, and it is

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1 they are equal weight.

2 Q So it's 50 percent contribution to the
3 marketplace.

4 A And the contacts, yes.

5 Q Okay. Now, well, let's assume that each
6 carried two distant signals. Would you still say that
7 each contributed 50 percent each to the marketplace,
8 to the distant signal marketplace?

9 A Right. Each -- you see, we now -- now
10 that we have moved multiple stations on individual
11 cable systems, we are now moving from -- I didn't
12 weight cable systems. I weighted stations. So your
13 phrasing about equal weight is not relevant to my
14 study, which I'm assuming that's what we're talking
15 about. And so I'm a little unclear now about what you
16 mean by that.

17 Q I am attempting to understand what you
18 mean by each station's relative contribution to the
19 total distant signal marketplace.

20 A Okay. So let me see if I can clear it up.

21 Q Okay.

22 A For each station in your two hypothetical

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1 systems of equal number of subscribers, each has the
2 identical weight, if these were the only four stations
3 that were distant signals on -- in these two systems.

4 JUDGE YOUNG: You said equal number of
5 distant signals.

6 THE WITNESS: Right. There were an equal
7 number of distant signals, and both cable systems have
8 an identical number of subscribers.

9 BY MR. OLANIRAN:

10 Q Now, still on your study, two distant
11 signals on each system, okay?

12 A Gotcha.

13 Q Let's say in that hypothetical System A
14 has a monthly subscriber rate of \$30, okay?

15 A Yes.

16 Q And System B has a monthly rate --
17 subscriber rate of \$15 per month.

18 A Yes.

19 Q Under your study, each system would still
20 have equal weight as their contribution to the distant
21 signal marketplace, would they not?

22 A I want to correct you again. I'm not

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1 weighting systems; I'm weighting stations. And I'll,
2 once again, say that each station has the same weight.

3 Q But under your study, under that
4 hypothetical, each station would still have equal
5 weight.

6 A That's correct under this hypothetical,
7 yes.

8 Q Okay.

9 JUDGE VON KANN: Let me ask a question,
10 because I may be confused. But I think the problem
11 perhaps is the use of this term "marketplace," which
12 I think Mr. Olaniran might be inferring is related to
13 dollars. And as I see it, this is related to time.
14 Am I misreading this?

15 THE WITNESS: When my reference here is in
16 terms of the programming -- as they say in the first
17 sentence the programming that's in the distant signal
18 marketplace, the available -- all of the subscribers
19 that view -- that are able to view all of the distant
20 signals, given my education, I frequently use the word
21 "marketplace." There may be another noun that --

22 JUDGE VON KANN: What you're really

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1 talking about is sort of the warehouse of programming
2 minutes that are out there or the collection, or
3 whatever it is.

4 THE WITNESS: Right.

5 JUDGE VON KANN: And the contribution of
6 the different stations to those minutes.

7 THE WITNESS: That's correct.

8 JUDGE VON KANN: But there's nothing in
9 this analysis, at least thus far that I saw, that
10 connected that directly with dollars.

11 THE WITNESS: That is correct.

12 JUDGE VON KANN: Okay.

13 JUDGE GULIN: I think Mr. Olaniran is --
14 he's also talking, if I understand him, about how to
15 weight those minutes. And you can weight it a number
16 of ways. You chose to weight it by number of
17 subscribers. You could have weighted it by amount of
18 fees paid on behalf of those subscribers. There are
19 a number of ways, but that's the way you chose.

20 THE WITNESS: Yes.

21 JUDGE GULIN: Okay.

22 BY MR. OLANIRAN:

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1 Q Do you understand the concept of distant
2 signal equivalents, or DSEs?

3 A Vaguely. I'm not so sure I can define it
4 for you.

5 Q Do you know at least that the DSE value
6 for an independent station -- well, first, do you
7 understand that there are different station types for
8 the purposes of --

9 A Yes.

10 Q -- this proceeding? There are educational
11 stations.

12 A Correct.

13 Q There are network affiliate stations,
14 independent stations.

15 A Okay.

16 Q Canadians, etcetera, etcetera. Now, do
17 you understand that the DSE value for an independent
18 station -- do you know what the DSE value for an
19 independent station is versus a network affiliate?

20 A I think I was told that, but I don't
21 recall what those values are.

22 Q Now, if we pretend that in our

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1 hypothetical that the two distant signals on System A
2 -- let's make a couple of assumptions. Let's assume
3 that for independent stations the DSE value is one.

4 A And that's -- one of the stations on
5 System A?

6 Q Just in general. And then, let's assume
7 that for network stations it's .25. And let's
8 pretend, then, in our hypothetical that the two
9 distant signals on System A are both independents,
10 okay?

11 A All right.

12 Q And the two systems -- the two stations on
13 System B are network affiliates.

14 A Gotcha.

15 Q Let's assume that they both have the same
16 monthly subscriber rate.

17 A So we're now longer 30 and 15. We're --

18 Q Right. Same. And each has the same
19 number of subscribers.

20 A Right.

21 Q Now, are you aware that in terms of
22 royalty payments whether or not the payments made by

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1 System A would be different from that made by System B
2 because of the difference in DSE value?

3 A No, I was not aware.

4 Q Okay. If I told you that the DSE value
5 for a particular distant signal has an impact on the
6 amount of royalty paid, would that have made a
7 difference in your study?

8 A No, because I didn't weight them at all by
9 the DSE values.

10 Q If I told you, for example, that an
11 independent station -- a system carrying an
12 independent station, a cable operator carrying an
13 independent station would have been required to pay
14 more because of the types of distant signals it was
15 carrying than the other station -- the other system,
16 would that have changed anything in your analysis?

17 A No, because I was attempting to analyze
18 and portray, as the Judge mentioned, a warehouse of
19 the programming available, move away from now the
20 marketplace.

21 MR. OLANIRAN: Okay. That's all the
22 questions I have.

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1 JUDGE YOUNG: Not to ask you to testify,
2 Mr. Olaniran, are you going to have a witness who is
3 going to do some of these other approaches you're
4 suggesting?

5 MR. OLANIRAN: Hopefully.

6 (Laughter.)

7 JUDGE YOUNG: I understand your point in
8 all of this. I was just not sure whether you get
9 significantly different results in --

10 MR. OLANIRAN: We will have a witness
11 testify to certain things in the direct phase of our
12 case. And depending on some of the issues that get
13 raised during the direct case, we will -- now that I
14 know you have an interest in that, that probably will
15 be a definite candidate for --

16 JUDGE YOUNG: Well, only if you tell me
17 there is significant differences.

18 MR. OLANIRAN: If you think it's helpful,
19 we would be more than happy to provide you with
20 information along those lines.

21 JUDGE GULIN: We will let you know if we
22 think it would be appropriate.

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1 MR. OLANIRAN: Okay. Thank you very much,
2 Dr. Fratrik.

3 THE WITNESS: Thank you.

4 JUDGE VON KANN: All right. I believe
5 that completes the cross examination, round one at
6 least.

7 Judge Gulin, do you have any questions?

8 JUDGE GULIN: No, I have no questions.

9 JUDGE VON KANN: Okay. Mr. Stewart?

10 MR. STEWART: I have a few questions on
11 redirect.

12 REDIRECT EXAMINATION

13 BY MR. STEWART:

14 Q First, just to get back to basics, for
15 each of the programs -- I'm sorry, strike that. For
16 each of the stations that was carried as a distant
17 signal on each of the dates that you had selected for
18 your sample, you received from TV Data Corporation
19 information about the programs that aired on that
20 station on that date, is that right?

21 A That is correct.

22 Q Okay. And that information, as you've

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1 testified, was generally used in the industry for
2 publishing program schedules and newspapers, and the
3 like, is that right?

4 A That's correct.

5 Q And that's the basis that you use to
6 identify the raw programs that you began, then, to
7 analyze, is that right?

8 A Correct.

9 Q Okay. Now, going back to WB, which Mr.
10 Dove started you -- this is the clarifying question I
11 wanted to ask. Do you have Exhibit 13-X?

12 A Somewhere.

13 Q Let me just hand you a copy of
14 Exhibit 13-X. Now, 13-X is a printed out schedule for
15 a particular week. Just take a look at the one that
16 you have there.

17 A Okay.

18 Q Printed out schedule for a particular week
19 that included one of the days. This is not what you
20 actually used as the raw program information for WGN
21 for the date that you selected in this particular
22 week, right?

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1 A Right. It was TV Data.

2 Q And you don't have any reason to believe
3 that this program schedule in 13-X is actually
4 different from what you got from TV Data, do you?

5 A No.

6 Q But your process was to start with that TV
7 Data schedule, correct?

8 A Correct.

9 Q And not this piece of paper?

10 A Correct.

11 Q Okay. Now, I want to show you
12 Exhibit 12-X, which Mr. Dove also showed you. And
13 this is the schedule that you used to compare to your
14 TV Data program listing for the particular day that
15 you had selected for your sample, correct?

16 A Correct.

17 Q And if there was -- if the title on this
18 page, 12-X, didn't match the TV Data title for the
19 same time period on the same day, you excluded that
20 30-minute period, is that right?

21 A That's correct.

22 Q So that --

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1 A Or whatever period it was.

2 Q Whatever period it was, okay. So in terms
3 of "excluding programming from your analysis," the
4 effect of it was -- let me drop back. 12-X is what
5 the programs looked like when they arrived at the
6 cable system, correct?

7 A Correct.

8 Q And --

9 A That's a national feed.

10 Q So the effect of your having excluded,
11 say, the first 30-minute period on a particular day
12 was that that program that was delivered to the cable
13 operator was encountered, right?

14 A Correct.

15 Q But you never analyzed those programs on
16 this sheet, because they weren't in your underlying
17 data.

18 A Correct.

19 Q And, further, you didn't analyze any of
20 the programs in your underlying data that matched the
21 periods for which you were going to exclude the
22 program time, correct?

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1 A They were just part of the larger data
2 set.

3 Q Okay. You also -- you don't have any
4 information about why particular programs were
5 substituted by the satellite carrier, do you?

6 A No, I do not have any --

7 Q And you said in your testimony yesterday
8 that -- you made a reference to -- the question from
9 Mr. Dove, on page 2070 of the transcript, at line --
10 beginning at line 10 is, "And the reason that these
11 programs weren't included is because these programs
12 weren't available on the local broadcast feed.
13 Therefore, they're not compensable under the copyright
14 license in this case, correct?"

15 Your answer at line 15 was, "Correct. WGN
16 separately acquires the rights to those programs."

17 But it's the satellite carrier that
18 acquires the rights to the replacement programs,
19 correct?

20 A Yes. I misspoke.

21 Q Okay. Now, the Joint Sports Claimants,
22 during their cross examination of you, introduced a

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1 number -- a series of exhibits, 8-X, I think maybe 9,
2 10, and 11. I don't have them all here -- which were
3 these pie charts. Do you recall that?

4 A Let me --

5 Q Just go with 8-X for --

6 A Okay. I've got them all.

7 Q -- the moment. This is a pie chart that
8 shows the internal distribution of the various minutes
9 that you counted as commercial TV programming for
10 1992, correct?

11 A That is what -- that is correct.

12 Q And they divide it up among stations, and
13 then divide it up among other things in the other --
14 in the subsequent exhibits. But the -- 9-X is what
15 I'm looking at. Sorry. 9-X has one for each year,
16 right?

17 A Yes.

18 Q Now, the sizes of the circles are the same
19 for each of the three years, is that right?

20 A They're slightly different, but they're
21 approximately the same. Oh, do you mean the entire
22 circle?

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1 Q Yes, the entire circle.

2 A Oh, those circles are certainly the same.

3 Q But that's not -- so that does not depict
4 what you actually measured, does it?

5 A No.

6 Q And, instead, if you look at Exhibit 12-X,
7 JSC 12-X --

8 A Yes.

9 Q -- do you see that -- the difference
10 between the height of the 1992 bar and the 1998 and
11 1999 bars?

12 A That's correct.

13 Q What does that difference represent?

14 A That difference represents the larger
15 percentage of total minutes that are part of the
16 commercial television category.

17 Q Okay. And that --

18 A In those two years.

19 Q And that increase in percentage between
20 '92 and '98 and '99 was what you measured in your
21 study, correct?

22 A Right.

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1 Q And did you go back and review any TV Data
2 subtype information to confirm whether it was correct,
3 whether it was really an other or a music show or a
4 news show or anything else?

5 A No, I didn't.

6 Q Okay. One thing Mr. Olaniran asked you
7 today was about parades and untitled programs and that
8 sort of thing. Do you recall that?

9 A Yes.

10 Q And you said -- first of all, starting
11 again with the parade, would you describe, if you had
12 a program named Parade on the data, what steps you
13 would go through to categorize it?

14 A First, if the parade was delivered by ABC,
15 CBS, and NBC, it would have been taken out of the
16 analysis.

17 Q And that's something that TV Data provided
18 you.

19 A Yes. The next step would have been if --
20 if the parade was -- let me try to get this -- if the
21 parade was aired by Fox, PAX, and Telemundio, UPN, WB,
22 or Univision, then it would have been put into the

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1 Program Suppliers category.

2 Q And that's something that was also in the
3 TV Data information.

4 A That's correct.

5 Q Okay.

6 A The next step was looking at the program
7 type, category, TV Data, and if that parade was either
8 a syndicated series, movie -- it obviously wasn't a
9 movie or a TV movie, cartoon, it may have been called
10 a first-run syndicated. It certainly wouldn't have
11 been called a mini-series. If any of those six
12 categories were -- it would have been placed in the
13 Program Suppliers category.

14 Q And that was also information provided to
15 you --

16 A Right.

17 Q -- in the TV Data information?

18 A Since I suspect that that would not --
19 well, it doesn't -- not sports, and it wouldn't have
20 been noted as an infomercial or animated. I would
21 have seen -- if it wasn't already placed in the
22 Program Suppliers, I would have seen if it was aired

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1 on two or more stations. And then I would have put it
2 in the Program Suppliers category.

3 Then, I would have looked at whether or
4 not TV Data indicated it was syndicated, and I would
5 have placed that in -- if it was so, I would have
6 placed it in the Program Suppliers category.

7 Q Let me stop you there for a minute. TV
8 Data provided you with an additional database or
9 additional information that listed all of the program
10 titles that they -- or program titles they considered
11 syndicated, is that right?

12 A Right.

13 Q And that's in addition to the -- what you
14 -- what's in paragraph 3 on page 9 of your testimony?

15 A Yes, that's in the program type field --

16 Q Okay.

17 A -- that TV Data supplied.

18 Q Okay. So those are checks that you would
19 make in succession.

20 A Yes.

21 Q Mr. Olaniran asked you, "You didn't go
22 back and check, did you?" And you said no, you did

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1 not, in testimony today. Did you mean that you didn't
2 check all those steps if you had a program named
3 parade?

4 A The steps that I just reviewed?

5 Q Right.

6 A No. I went and I did those steps.

7 Q Did you mean that you didn't go back and
8 check to see whether, if TV Data said it was
9 syndicated or not, they were actually correct? Is
10 that what you understood when you answered that
11 question?

12 A Yes.

13 Q Okay.

14 A I didn't recheck TV Data.

15 Q To be announced -- you said you think you
16 may have eliminated those, do you recall that?

17 A Yes.

18 Q Would that mean you simply zeroed them out
19 and didn't count them in anybody's category?

20 A Correct.

21 Q And, finally, on the question of sample
22 selection, based on your experience, how many years

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1 were you at the National Association of Broadcasters?

2 A I was there nearly 16 years.

3 Q And your knowledge of the television
4 industry, is it -- would you expect for television
5 programming to be different based on the day of the
6 week it was? In other words, is it likely that
7 television programming is different on Wednesday than
8 it is on Saturday?

9 A It certainly is.

10 Q And would you also expect that television
11 programming is different, depending on what month of
12 the year it is?

13 A Yes, it is.

14 Q Why do you say that?

15 A Although there are different types of
16 programming that appeals to people in different times
17 of the year -- here's my chance of mentioning club
18 baseball. That's in the summer months. It's not in
19 the -- baseball is not in the winter months.

20 Q Okay. So, and then finally, if you
21 followed -- when you followed your procedure of
22 generating a random number and selecting a particular

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1 day of the week, as you discussed with Mr. Olaniran,
2 would it have been an appropriate statistical
3 methodological step for you to look again at the days
4 you had selected and eliminate ones that you thought
5 were -- that turned out to be holidays?

6 A I would think that would be a very unfair
7 selection of a random sample.

8 MR. STEWART: Okay. No further questions.

9 JUDGE YOUNG: One last question, just
10 following up on Mr. Stewart's question about JSC 12-X.
11 I just want to make sure I understand your
12 understanding of this chart.

13 On the left-hand axis, vertical axis, is
14 the percentage of total compensable programming
15 minutes that are in your study?

16 THE WITNESS: I believe so. I did a quick
17 review to see whether or not those -- summing those
18 bars is the same. If you give me one second, I want
19 to review that. Yes, that is the total commercial
20 television.

21 JUDGE YOUNG: So commercial television.
22 If you look at Table 3 in your report, commercial TV,

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1 in 1992, at about 8.79 percent of the total
2 compensable programming minutes, and that's what's
3 reflected in this chart.

4 THE WITNESS: That's correct.

5 JUDGE YOUNG: And then, it's broken down
6 further by the percentage of total minutes, total
7 compensable minutes -- that is, commercial TV on non-
8 superstations. That's the yellow.

9 THE WITNESS: Yes.

10 JUDGE YOUNG: And then, the maroon and the
11 blue is -- or the red and the blue is the total
12 percentage of -- the percentage of all minutes that
13 are on -- commercial TV on superstations.

14 THE WITNESS: Right. I have not
15 calculated this. Subject to verification --

16 JUDGE YOUNG: But that's your
17 understanding of it.

18 THE WITNESS: That's my understanding of
19 the chart.

20 JUDGE YOUNG: Okay.

21 MR. STEWART: May I ask one clarifying
22 question?

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1 BY MR. STEWART:

2 Q This is weighted by subscriber carriage,
3 correct? These percentages are percentages --

4 A Yes, it is.

5 Q And if WTBS goes away, then the sort of
6 denominator shrinks somewhat, is that correct?

7 A Yes.

8 Q And if WGN increases its carriage a
9 little, but the denominator is smaller, then its
10 percentage contribution would increase?

11 A Certainly, yes.

12 MR. STEWART: Okay. That's all. Thank
13 you.

14 JUDGE VON KANN: Anyone else? Does that
15 do it? All right.

16 Dr. Fratrik, thank you. You're excused.
17 We appreciate your coming back today to complete.

18 (Whereupon, the witness was excused.)

19 Let's take a 15-minute recess, and then
20 we'll begin with Mr. DeFranco.

21 (Whereupon, the proceedings in the
22 foregoing matter went off the record at

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1 4:52 p.m. and went back on the record at
2 5:10 p.m.)

3 JUDGE VON KANN: Okay. Mr. Lazarus?

4 MR. LAZARUS: Michael Lazarus, National
5 Association of Broadcasters. I call our next witness,
6 Laurence DeFranco.

7 WHEREUPON,

8 LAURENCE DeFRANCO

9 was called as a witness by Counsel for the National
10 Association of Broadcasters and, having been first
11 duly sworn, assumed the witness stand, was examined
12 and testified as follows:

13 MR. LAZARUS: He's still sworn in from 10
14 years ago.

15 (Laughter.)

16 JUDGE VON KANN: Okay.

17 DIRECT EXAMINATION

18 BY MR. LAZARUS:

19 Q What is your name, for the record?

20 A Laurence Joseph DeFranco.

21 JUDGE VON KANN: What is it for other
22 purposes?

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1 (Laughter.)

2 MR. LAZARUS: It's going to be one of
3 those, huh?

4 (Laughter.)

5 I'm in trouble.

6 BY MR. LAZARUS:

7 Q What is your current position?

8 A I'm President of IMAP Data.

9 Q And how long have you been in that
10 position?

11 A 21 years.

12 Q What does IMAP Data do?

13 A We provide geographically-based
14 information to both the public and private sector.

15 Q And who are some of your clients?

16 A On the public sector side, government
17 agencies such as the FBI, Department of Homeland
18 Security, Department of Energy. On the private sector
19 side, BellSouth, Wal-Mart, Anheuser-Busch.

20 Q Has your work for those clients involved
21 the use of mapping software that you employed in your
22 testimony for this proceeding?

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1 A Yes.

2 Q What is your educational background?

3 A I have a B.A. in Political Science from
4 Muhlenberg College.

5 Q How long have you been in the consulting
6 business?

7 A 21 years.

8 Q Have you ever testified at any prior cable
9 copyright arbitration proceedings?

10 A Yes, two.

11 Q And which ones were those?

12 A The 1989 proceeding and the 1990-'92
13 proceeding.

14 Q I direct your attention to the document
15 entitled Statement of Laurence J. DeFranco and
16 Exhibits 11 to 14. Is this your testimony?

17 A Yes.

18 MR. LAZARUS: And I will make Mr. DeFranco
19 available for voir dire as an expert in industry
20 analysis and research.

21 JUDGE VON KANN: Anybody have any
22 questions? All right.

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1 BY MR. LAZARUS:

2 Q What were you asked by the National
3 Association of Broadcasters to do?

4 A I was asked to perform a distant signal
5 analysis.

6 Q And could you describe this analysis?

7 A It's taking a location of a cable system
8 and calculating the distance between that location and
9 the distant signal television stations that's carried
10 on that cable system.

11 Q Was this the same analysis you performed
12 for the 1990 to '92 proceeding?

13 A Yes.

14 Q And was this the same analysis you
15 performed for the 1989 proceeding?

16 A Yes.

17 Q What source data did you use to prepare
18 the distance analysis?

19 A We were provided, from Cable Data
20 Corporation, two databases -- one from 1989, second
21 accounting period, and one from 19 -- I'm sorry, 1998,
22 second accounting period, and one from 1999, second

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1 accounting period.

2 Q And what did this data contain?

3 A Each record contains a pair of
4 information, one cable system community with one TV
5 station.

6 Q What stations did your analysis include?

7 A We included all U.S. stations, excluding
8 the historical superstations.

9 JUDGE VON KANN: Mr. DeFranco, don't let
10 your voice trail off at the end, if you would, please.

11 THE WITNESS: I'm sorry.

12 BY MR. LAZARUS:

13 Q Why were these stations omitted?

14 A To be consistent with previous years'
15 study. It's my understanding that the first time we
16 did this we omitted the stations because there was a
17 -- I believe a 1978 Wharton econometric study that had
18 omitted those same stations.

19 Q And why was it important to be consistent
20 for your analysis?

21 A We want to be able to compare the results
22 from year to year, study to study.

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1 Q What was the first step you took in
2 performing the analysis?

3 A We located the latitude/longitude of the
4 TV station.

5 Q And how did you identify this location?

6 A We used the geographic reference points
7 found in the FCC rules.

8 Q And if you couldn't find it?

9 A We had various other databases to check,
10 such as the USGS database of place names.

11 Q How did you identify the location of the
12 cable system?

13 A The Cable Data database included the prime
14 city location of the cable system, and we looked up
15 the coordinates of that location.

16 Q Why did you use the first community
17 designated by the system in its statement of account?

18 A They call it the prime community in the
19 database, and it's my understanding that that's the --
20 that's the city that the cable system itself
21 designates as their main place of service.

22 Q Once you identify the coordinates for the

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1 TV station and the cable system, what did you do next?

2 A We calculated the distance between those
3 two points.

4 Q Was this methodology the same methodology
5 you used for the 1990 to 1992 analysis?

6 A Yes.

7 Q And what were your results for this
8 analysis?

9 A We displayed the results in a table
10 format.

11 Q Can you please turn to Exhibit 11? Would
12 these be the results of your analysis?

13 A Yes.

14 Q Please explain the information presented
15 in Exhibit 11.

16 A There are two tables here. The first one
17 is for 1998. The second one is for 1999. We depict
18 the results in four columns. The first column shows
19 the individual ranges in miles. The second column
20 depicts the number of signals that are found in that
21 range of miles. The third column calculates the
22 number of signals as a percentage of all of the

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1 distant signals. And the fourth column is a running
2 -- cumulative running count percentage of the stations
3 as you go down the first column.

4 Q So, for example, what would the first line
5 of information -- the first row of information tell
6 us?

7 A That there are 374 distant signals between
8 35 and 50 miles of its cable system that it's being
9 carried on, which represents 19.2 percent of all the
10 distant signals. And, again, 19.2 percent is the
11 running total at that point.

12 Q And what do you mean by cumulative
13 percentage?

14 A Again, it's the running count. So, for
15 example, if you get to the second line, you would add
16 374 plus 1,017, and it would -- that would be the
17 percentage of those two rows as a percent of the total
18 number of distant signals.

19 Q And then, what would page -- strike that.
20 How would page 2 of this exhibit be different than
21 page 1?

22 A Just in the year of the data, 1999 versus

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1 the previous one, 1998.

2 Q How did the results for this 1998 to 1999
3 analysis compare to those reached in your analysis for
4 prior years?

5 A For which segment of distance?

6 Q For the segment up to 150 miles.

7 A Okay. In 1989, the cumulative percentage
8 was 86.5; in 1992, 87.6; in 1998, 89.2; in 1999, 89.2.

9 Q Is this the same data presented in graphic
10 form in Exhibit 11, which was discussed by Dr. Ducey?

11 A Yes.

12 Q Exhibit 7.

13 A Yes.

14 Q Okay. What information is included on the
15 maps you present in Exhibits 12 to 14?

16 A We depict the community of the TV stations
17 that we see in the title. We have a 35-mile radius
18 surrounding that location. We depict the ADI that
19 that community is located in, the surrounding ADIs,
20 and the cable communities that are carrying that
21 station.

22 Q And do you --

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1 A And there's also a 150-mile radius. You
2 can see it a little bit on the map.

3 Q Did you prepare similar maps for the 1990
4 to 1992 proceeding?

5 A Yes.

6 Q Please turn to Exhibit 13. How would this
7 map relate to the distance analysis?

8 A It's depicting the same information.

9 Q So, for example, if you counted up all of
10 the red dots in the blue area, these would all be
11 within the 150 miles?

12 A That's correct.

13 Q And thus would all be reflected in the
14 89.2 percent that you mentioned earlier?

15 A That's right.

16 MR. LAZARUS: No further questions.

17 JUDGE VON KANN: Let me just get a little
18 clarification. I suspect the others out here
19 understand what you did a little bit better than I do.
20 But if you look on page 2, under your section Distance
21 Analysis, second full paragraph, the second sentence
22 says, "In essence, I determined the mileage distance

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1 between the principal community of each Form 3 cable
2 system and the community of license of each station
3 the system carried as a distant signal."

4 Let me make sure I understand what that
5 means. Let's take the first part. The principal
6 community of each Form 3 cable system -- what does
7 that mean?

8 THE WITNESS: Well, I don't look at the
9 actual Form 3, but from what I understand the cable
10 operator lists communities they serve.

11 JUDGE VON KANN: Okay.

12 THE WITNESS: They list one community in
13 particular that they call --

14 JUDGE VON KANN: The principal community?

15 THE WITNESS: -- the principal community,
16 right.

17 JUDGE VON KANN: So the cable operator in
18 a principal community.

19 THE WITNESS: That's what I understand,
20 yes. Now, when I get the data, that city is what they
21 call I think in the database prime community, and that
22 matches this here.

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1 JUDGE VON KANN: Okay. This may go beyond
2 your knowledge, and that's fine. Do you know whether
3 that is the largest city that that cable system
4 operates, or the one with the most subscribers in it,
5 or the one with --

6 THE WITNESS: I don't think it's
7 necessarily the largest.

8 JUDGE VON KANN: Okay.

9 THE WITNESS: I believe it's up to -- I'm
10 not sure there's a rule, and there's other people in
11 the room probably that can answer better than I can.
12 But it's the one I believe that cable system does act
13 as a principal --

14 JUDGE VON KANN: All right. So you looked
15 on their sheet, and they say it's the principal
16 community in that. And if this is a -- I guess if
17 it's a city of some size, it would be -- do you take
18 the outer boundary, the boundary that's -- I don't
19 know, if you draw a straight line from the station --
20 the closest point that would intersect some part of
21 that city, it's not necessarily in the center?

22 THE WITNESS: Right. We take the

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1 geographic center, so it's a point.

2 JUDGE VON KANN: You do take the
3 geographic --

4 THE WITNESS: Right.

5 JUDGE VON KANN: -- center.

6 THE WITNESS: Right.

7 JUDGE VON KANN: Of that principal
8 community.

9 THE WITNESS: Correct.

10 JUDGE VON KANN: And then, the other thing
11 that you -- the other point that you measure is the
12 community of license of each station the system
13 carried.

14 THE WITNESS: Yes, sir.

15 JUDGE VON KANN: What does that mean?

16 THE WITNESS: That is the TV -- in other
17 words, it wouldn't be the TV station's transmitter
18 location. It would be community that the TV station
19 has a license to serve as the -- it's the name on the
20 -- from the FCC document.

21 JUDGE VON KANN: Is that different than
22 its ADI?

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1 THE WITNESS: Is it different than -- it
2 would be within an ADI.

3 JUDGE VON KANN: Okay. So within the ADI,
4 there is a particular thing called the community of
5 license, is that right?

6 THE WITNESS: For a TV station, yes.

7 JUDGE VON KANN: Okay. So if we look, for
8 example -- I just happened to flip open your
9 Exhibit 13, and I guess for this station KYW the
10 community of license is probably Philadelphia?

11 THE WITNESS: Correct.

12 JUDGE VON KANN: But the ADI encompasses
13 a good deal broader area.

14 THE WITNESS: Yes.

15 JUDGE VON KANN: Okay. And then, for one
16 of these -- you know, Stroudberg up there, if that was
17 listed as the principal -- what is it called?
18 Principal community of some Form 3 cable operating
19 system.

20 THE WITNESS: Correct.

21 JUDGE VON KANN: Okay. Thank you.

22 JUDGE YOUNG: The only question I have is

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1 to make sure I understand that on Exhibit 11, when you
2 have the number of distant signals, this could mean
3 one particular broadcast station can have multiple
4 distant signals, and it would be listed in multiple
5 times.

6 THE WITNESS: If the system is listed with
7 more than one cable system.

8 JUDGE YOUNG: Right.

9 THE WITNESS: Yes.

10 JUDGE YOUNG: So using, again, what Judge
11 von Kann was looking at, Exhibit 13, you would have
12 KYW, but the fact that it's distant signal that's
13 picked up with Stroudberg would mean it would be
14 listed once?

15 THE WITNESS: That's --

16 JUDGE YOUNG: You could pick it up by
17 around Pocono, and now we've listed it twice?

18 THE WITNESS: Right.

19 JUDGE YOUNG: Okay.

20 THE WITNESS: Those were the pairs I was
21 talking about earlier.

22 JUDGE YOUNG: Right.

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1 JUDGE VON KANN: And you would have used
2 -- I don't know if this is crucial, but you would have
3 used, as the other terminus of your measuring point,
4 the city center of Philadelphia, not, for example,
5 where the transmitting power was located or something.

6 THE WITNESS: Well, for the TV station,
7 the first source was the geographic reference point of
8 the FCC rules. So they actually, in the FCC rules,
9 give a latitude/longitude of the community. If it
10 wasn't listed there, we used, as secondary sources,
11 the geographic center of those communities. I can't
12 speak to how exactly the FCC calculated it. It was my
13 - it has always been my understanding that that was
14 also a central point to the city.

15 JUDGE VON KANN: Okay. Any agreement as
16 to who's going next?

17 MR. DOVE: I don't have any questions.

18 JUDGE VON KANN: Okay.

19 MR. DOVE: So I'm happy to --

20 JUDGE VON KANN: You just went, then.

21 (Laughter.)

22 Okay.

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CROSS EXAMINATION

BY MR. OLANIRAN:

Q Good afternoon, Dr. -- is it Dr. DeFranco?

A No. I'm sorry. You gave me that battlefield promotion earlier.

(Laughter.)

Q Good afternoon, Mr. DeFranco. My name is Greg Olaniran. I'm counsel for Program Suppliers.

Before I proceed, I have to tell you, having read your testimony, and I was -- I could not pass up an opportunity to at least have a half-hour discussion with you. So thank you for being here.

I'm going to be very brief, and I want to make sure I understand exactly what you've done.

On page -- at the top of page 3 of your testimony, do you see that paragraph?

A Yes.

Q You're saying that the percentages of distant Form 3 non-superstation carriage incidents within 150 miles of the station being carried were 89.2 for 1998-2 and 89.2 for 1999-2. And I'd like to write on the board for a second, just to make sure I

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1 understand.

2 Now, this is the first time I'm writing on
3 this board, so we'll see whether I'll still be allowed
4 to do that after I'm done. All right. Okay. So we
5 had -- let's just do this. For 98-2, we have 99 for
6 that. Okay. 99-2, and then we have the percentages.
7 Okay.

8 Now, we know that for zero to 150 -- all
9 right -- for 98-2 that would be 89 percent, 89.2,
10 correct?

11 A Correct.

12 Q Okay. And for 99-2, same thing. Now,
13 what I need you to do is fill in the blank. Okay?
14 Now, the numbers that you used to compute the 89.2
15 percent, now where are those?

16 A They're in the number of distant signals
17 column, the second column.

18 Q Okay. Now, when you say number of distant
19 signals, are you referring to instances of carriage as
20 opposed to unique signals?

21 A Yes.

22 Q Okay. And what would be the number that

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1 you're using -- I guess that's the denominator, first
2 of all.

3 A For the zero to 150?

4 Q Yes.

5 A That would be the total number of distant
6 signals on this table.

7 Q And what would that number be?

8 A There's about 15 numbers here that would
9 have to be added up.

10 Q Would you accept, subject to check, that
11 the number would be 1,736? Would it be all of the
12 numbers on that column?

13 A Correct.

14 Q Okay. Okay. I think it's 1,947. 1,947.

15 A Okay.

16 Q That number never made it to the record.

17 JUDGE VON KANN: What number, Mr.
18 Olaniran?

19 MR. OLANIRAN: I'm trying to get the right
20 number.

21 BY MR. OLANIRAN:

22 Q I have for all of the numbers in the

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1 second column on the exhibit, NAB Exhibit 11, that
2 total is 1,947?

3 A I have no reason to doubt that. It would
4 go in the denominator, and it would be -- it would go
5 here.

6 Q Oh, I'm sorry. This is -- let me clarify
7 this. This would be greater than 150. So under the
8 98-2 column, for zero to 150, it would be one number,
9 which we're not sure exactly what that is right now,
10 and then we would have another number, I suppose, for
11 greater than 150 miles, correct?

12 A Correct.

13 Q Now, what number -- in terms of the number
14 of instances of carriage for the zero to 150, what
15 number would that be?

16 A That would be the sum of the first three
17 numbers in the second column, the 374 plus 1,017 plus
18 345.

19 Q That would be 1,736, would it not, subject
20 to check?

21 A Yes.

22 Q Okay. And the balance of that, if you

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1 added up the entire column, would make up the --

2 A No, the balance of that would make up your
3 greater than 150 row.

4 Q Okay. Would that be 211?

5 A Okay.

6 Q Subject to check?

7 A Yes.

8 Q And then, you add that up, and you get
9 1,947.

10 A Right.

11 Q And just backing into the percentage for
12 the greater than 150, that would be -- somebody help
13 me with the math. Is that correct?

14 A Yes.

15 Q So zero to 150, 1,736 instances of
16 carriage. This is 89.2. And greater than 150, 211
17 instances of carriage, 10.8.

18 Now, for 99-2, since I did the math based
19 on what we just did, the total instances of carriage
20 studied is 2,060. And for zero to 150, it would be
21 1,838. And the balance of that would be 222. And,
22 again, it's 10.8 percent of the total instances of

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1 carriage studied. Is that an accurate portrayal of
2 the results of your study?

3 A Yes.

4 Q Now, how are we to interpret this number?

5 A In what sense?

6 Q What is the number telling us?

7 A Which number? I'm sorry.

8 Q Let's start with the 89.2 for zero to 150.

9 What should we conclude from looking at that number?

10 A That there is that percentage of stations
11 between zero and 150, instances between zero and 150,
12 out of the total.

13 Q Okay. And also, with regard to -- still
14 looking at 98-2 for the greater than 150, it would
15 mean that there are 211 instances of carriage within
16 -- over 150 miles?

17 A Yes.

18 Q Okay. Now, you indicated in your direct
19 testimony that you were asked to perform a distant
20 signal analysis, did you not?

21 A Yes.

22 Q Okay. And you've done this in several

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1 proceedings, at least as far as I can think back. For
2 1989, you did provide a similar analysis?

3 A Yes.

4 Q And also in the 1990-'92 proceeding, do
5 you recall that?

6 A Yes.

7 Q Now, one of the criticisms of your study
8 was the fact that you did not study all of the distant
9 signals, do you recall that?

10 A No.

11 Q You don't. Well, let me ask you, you
12 excluded the superstation.

13 A Yes.

14 Q And why did you do that?

15 A We were asked to exclude them to be
16 consistent with a 1979 Wharton econometric study.

17 Q Is that the only reason?

18 A That was the reason I was given, and
19 that's the reason why we did it, yes.

20 Q Could you have gone back -- for example,
21 this year -- and adjusted the numbers for the 1992
22 year end to include -- to consider the superstations?

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1 A If we can find those original databases,
2 then we could have done that, yes.

3 Q Can you, in fact, consider the -- aside
4 from the issue of consistency, can you, in fact,
5 compute the same percentages in addition to using --
6 considering the superstition numbers?

7 A Yes.

8 Q Okay. Are you aware of NAB's arguments in
9 general in this proceeding?

10 A Not very much, no.

11 Q Let us assume that one of the arguments
12 that's been advanced in this proceeding --

13 MR. STEWART: Objection, Your Honor.
14 Sorry to cut you off, but he was asked to do a study
15 and --

16 JUDGE VON KANN: Well, it sounds like it
17 might get into a dangerous terrain, but let's at least
18 hear the question, in all fairness, and see if he can
19 skirt it.

20 (Laughter.)

21 BY MR. OLANIRAN:

22 Q Let us assume one of the major issues in

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1 this proceeding has to do with the instances of
2 carriage on a superstation. Do you think it would be
3 helpful to at least know the instances of carriage on
4 a superstation?

5 MR. LAZARUS: Objection, Your Honor.

6 JUDGE VON KANN: Sustained. Maybe.

7 (Laughter.)

8 (Bench conference.)

9 No. Sustained is still in force.

10 (Laughter.)

11 It's still sustained.

12 BY MR. OLANIRAN:

13 Q Did you do an analysis that included the
14 superstations?

15 A No.

16 Q Did you know what the impact would have
17 been on the percentages had you included the
18 superstations?

19 A I don't know what the impact would have
20 been.

21 Q Do you want to see?

22 (Laughter.)

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1 A It really doesn't matter to me personally.

2 MR. OLANIRAN: I have a copy of -- my copy
3 of -- I think it's PS 6-X. I only have one copy, and
4 I have some of the pages tabbed for convenience, since
5 I already actually have the numbers, and I'm going to
6 have counsel look at it before I hand it to the
7 witness. I'm trying to stay under 30 minutes.

8 JUDGE VON KANN: We may help you.

9 (Laughter.)

10 MR. OLANIRAN: Well, I am going to show
11 the witness PS 6-X. And I have a blank copy that
12 doesn't have any markings that I thought, for
13 convenience's sake, I would show to the witness.

14 And I represent to you that this is data
15 that was provided to us by NAB for another witness.
16 It is a document that is routinely provided by Cable
17 Data Corporation for all of the parties.

18 BY MR. OLANIRAN:

19 Q I wanted to direct your attention to the
20 tabbed pages. And I just want to get a total. Can
21 you describe the document fairly -- are you familiar
22 with this document?

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1 A Never seen it before, that or the
2 document.

3 Q I represent to you that this was again
4 that is produced by Cable Data Corporation. It
5 captures a variety of information. One such piece of
6 information, if you look across the top at the labels
7 of the different columns, go over to the right-hand
8 side, you see a column entitled "Distant Instances of
9 Carriage."

10 A Yes.

11 Q Do you see that?

12 A Yes.

13 Q And right above that, you see the
14 accounting period, which is the 1999-2 accounting
15 period.

16 A Yes.

17 Q Do you see that?

18 A Yes.

19 Q And if you also go down the left-hand side
20 of the page, you will see data accumulated by station
21 types. Do you see, for example, I think the very
22 first station type is educational?

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1 A Yes.

2 Q And the next one I think is independent?

3 A Religious was first.

4 Q I'm sorry. Religious.

5 A Regular and then --

6 Q Right. And you have independent. And all
7 the way at the bottom of the page, you have network.
8 Do you see that?

9 A Yes.

10 Q I am going to ask you to flip over to the
11 next page.

12 JUDGE YOUNG: Excuse me one second.

13 MR. OLANIRAN: All right.

14 (Pause.)

15 JUDGE YOUNG: I'm trying to ascertain, was
16 this document admitted for impeachment or for all
17 purposes?

18 MR. OLANIRAN: It was admitted for all
19 purposes because it was actually provided to us by
20 NAB. I believe it would have been Dr. Ducey, I
21 believe it was.

22 BY MR. OLANIRAN:

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1 Q If you look at the bottom of what is
2 indicated as -- I don't see a page number but what
3 would be the second page of the document I just handed
4 you, at the bottom of the page, it says, "Total."
5 Under "Distant Instances of Carriage," do you see that
6 number?

7 A Yes.

8 Q What is that number?

9 A Four thousand three hundred and seven.

10 Q What accounting period are we looking at
11 there?

12 A It says 1999-2.

13 Q That would be the period that you studied.
14 Is that correct?

15 A One of the two periods, yes.

16 Q One of the two periods. Okay. And I
17 think we already know from our earlier discussion that
18 the total instances of carriage for 02150 is 1,838 for
19 '99-2 accounting period, correct?

20 A Yes.

21 Q And, just by simple subtraction, the
22 difference in that for distant instances of carriage

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1 over 150 miles, that would be 2,469, subject to check.

2 Now let's flip back a little bit on --

3 JUDGE von KANN: Mr. Olaniran, these
4 numbers you're putting up apparently include
5 superstations. Is that the idea?

6 MR. OLANIRAN: The document is entitled
7 "Summary Pages for Form 3 Cable System," and I assume
8 that those include superstations.

9 JUDGE von KANN: Why couldn't --

10 MR. OLANIRAN: It is my understanding that
11 they include superstations.

12 JUDGE von KANN: Why could there not be
13 any principal whatever the phrase is, principal
14 community within 150 miles of a superstation's city of
15 license? You assume that the number 1,838 carries
16 over there. Why could there not be any superstations
17 that are within 150 miles of their principal city of
18 license?

19 MR. OLANIRAN: I'm not sure I understand.

20 JUDGE YOUNG: He means cable systems that
21 are within 150 miles of the superstation.

22 JUDGE von KANN: Right. If you've got a

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1 superstation in Atlanta, why couldn't there be some
2 cable systems within 150 miles of Atlanta that carry
3 it?

4 BY MR. OLANIRAN:

5 Q The number they give, the distant
6 instances of carriages for '99-2, does that include
7 any superstations?

8 A The 1,838?

9 Q The 1,838.

10 A No.

11 MR. OLANIRAN: Does that answer your
12 question?

13 JUDGE YOUNG: No. What he's asking is
14 when you put up 2,469, put aside the fact that 222
15 were non-superstations. You're assuming that all the
16 instances of carriage associated with a superstation
17 would be over 150 miles away from the superstation.

18 JUDGE von KANN: As I saw what you did,
19 you wrote up the total, 4,307, at the bottom.

20 MR. OLANIRAN: Right.

21 JUDGE von KANN: Then you said, "We
22 already know that there are 1,838 instances within 150

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1 miles."

2 MR. OLANIRAN: Correct.

3 JUDGE von KANN: But we don't know that if
4 we're including superstations.

5 MR. OLANIRAN: But we're not including
6 superstations in the 1,838.

7 JUDGE von KANN: Right.

8 JUDGE YOUNG: Why aren't we?

9 MR. OLANIRAN: Because he's just --

10 JUDGE von KANN: Because DeFranco didn't.
11 The numbers on the black side, on the left don't
12 include superstations, but these numbers on the red
13 are supposed to.

14 MR. OLANIRAN: Well, this number and this
15 number are the same number. These are the numbers
16 that --

17 JUDGE von KANN: Why are they the same?

18 JUDGE YOUNG: How do you know they're not
19 2000?

20 JUDGE von KANN: Why are they the same
21 number?

22 MR. OLANIRAN: Because that's the number

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1 that he has told us.

2 JUDGE von KANN: Without superstations.

3 MR. OLANIRAN: Without superstations.

4 What I have simply done is taken the total Form 3
5 systems and just put it for the total Form 3 systems.

6 JUDGE von KANN: Maybe I misunderstand.
7 Isn't this line, this first line, intended to be over
8 on the red side all instances of carriage within 150
9 miles?

10 MR. OLANIRAN: Correct.

11 JUDGE von KANN: In a universe that
12 includes superstations?

13 MR. OLANIRAN: That would be a question
14 for him, I suppose.

15 THE WITNESS: Well, I can't speak to the
16 red. I can only speak to the black side.

17 JUDGE von KANN: Why don't you go ahead
18 and complete your questioning? Then we'll see where
19 it gets us.

20 THE WITNESS: I don't know that number is
21 accurate in their view. I have no way of knowing
22 that.

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1 BY MR. OLANIRAN:

2 Q Well, that 1,838 can --

3 A It's accurate on this side.

4 Q It's accurate on this side?

5 A Right.

6 Q And why isn't it accurate on that side?

7 A I don't know how many superstations would
8 fall between the zero and the 150.

9 Q I thought you indicated that you excluded
10 superstations.

11 A But you're not on this side. You're --
12 but suppose -- presumably my understanding, whatever
13 number goes here includes superstations because
14 everything in the red includes superstations.

15 Q I'm not indicating that whatever number
16 goes there includes superstations. I am simply
17 transferring the number of instances of carriage that
18 you studied for '99-2 over to that side.

19 And I'm simply transferring the same
20 number that you have indicated they used for it,
21 transferring it over here, getting the total of the
22 distant instances of carriage, which would include

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1 this number as simply taking the difference and
2 plugging it into --

3 A So these numbers have no relationships to
4 the row headings, "Zero to 150," "Greater Than 150"?

5 Q The 1,838 number in the red column is the
6 number that you have indicated that you studied,
7 instances of carriage that you studied.

8 A I'm sorry. I'm trying to understand.
9 Could I ask a question to help me understand?

10 Q Sure.

11 A Everything on the left side, the black
12 ink, I understand to be a study done, my study, --

13 Q Right.

14 A -- excluding superstations.

15 Q Correct.

16 A And I'm understanding, maybe incorrectly,
17 that everything on the right side, in the red ink, is
18 going to be the results including superstations.

19 Q Well, let's assume everything on the right
20 side -- let's assume that there are 4,307 instances of
21 carriage total based on the data that CDC has.

22 A Right.

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1 Q And you would have studied, would you not,
2 based on the black, the information in black, on the
3 left-hand side 2,060. Is that correct?

4 A That's correct.

5 Q Now, you indicated that you were engaged
6 to study all of the distant signals?

7 A Excluding the superstations.

8 Q I didn't hear you say excluding the
9 superstations. I recall you saying to study distant
10 signals.

11 A I'm sorry?

12 Q I recall you saying that you were engaged
13 to study the distant signals.

14 A Right. And then I believe I was asked
15 what was a set or some form of that question of
16 stations I studied, and I said, "U.S. commercial
17 stations excluding the superstations."

18 Q Would you agree, then, that the 1,838
19 number of distant instances of carriage that you
20 studied does not constitute the entire population of
21 the distant signals?

22 A There is no way for me to know.

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1 Q Well, let's assume that the exhibit PS 6-X
2 is correct that there are 4,307 instances of carriage
3 in the population Form 3 systems. Would you accept
4 that, though you haven't studied the entire
5 population?

6 A Well, I could -- no. I still couldn't say
7 that there were 1,838 in the zero to 150 range because
8 it doesn't say here how many of these numbers are
9 superstations or how many are in the different ranges.

10 Q We're indifferent to superstations at this
11 one. We are focusing on the total instances of
12 carriage.

13 A Accepting this number, there are more
14 total stations on the right side of the study than on
15 my side of the study.

16 Q Yes.

17 A I don't have a problem with that number.
18 It's these two numbers I don't -- I can't speak to.

19 Q Let me try to explain this. Let me see if
20 I can make this clear again. Assume that the PS 6-X
21 indicates that for the period '99-2 there are 4,307
22 instances of carriage.

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- 1 A I accept that.
- 2 Q Do you have that assumption?
- 3 A Yes.
- 4 Q Okay. Assume that your study indicates
- 5 that you have studied 1,838 --
- 6 A Yes.
- 7 Q -- instances of carriage. The differences
- 8 between --
- 9 A No, no, no. I studied 2,060 instances of
- 10 carriage.
- 11 Q I'm sorry. You studied 2,060 instances of
- 12 carriage, correct?
- 13 A Correct.
- 14 Q And of the 2,060, you attributed 1,838 --
- 15 A Yes.
- 16 Q -- to zero to 150?
- 17 A Yes.
- 18 Q So, then, the difference between the 1,838
- 19 and the 4,307 would be greater than 150, would it not?
- 20 A There is no way of knowing. No, not
- 21 necessarily.
- 22 JUDGE von KANN: Mr. Olaniran, maybe it

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1 would help the witness help us if you could tell us
2 because this is your creation what you intend these
3 two numbers on the right to represent, 1,838 and
4 2,469. If we had a little description on the left
5 about what those two lines reflect, what would it say?
6 What is 1,838 supposed to be? What is 2,469 supposed
7 to be?

8 MR. OLANIRAN: I am simply trying to
9 ascertain what percentage of the total distant signal
10 population were attributed to zero to 150.

11 JUDGE von KANN: So the attempt here is to
12 say that of the total of 4,307 distant signals,
13 instances of distant signal carriage, --

14 MR. OLANIRAN: Right.

15 JUDGE von KANN: -- 1,838 reflect
16 situations within 150 miles and 2,469 are beyond that?

17 MR. OLANIRAN: The 2,469 perhaps could be
18 beyond that. And I understand that the witness is
19 saying there is no way of knowing. I am simply trying
20 to get to what percentage of the population is
21 studied.

22 I know from NAB exhibit that there are

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1 4,307 instances in the entire population. And as he
2 has described, 1,838 of those to zero to 150, it would
3 seem that the remainder would be 2,469.

4 JUDGE YOUNG: Isn't, really, your point
5 that he studied 2,060?

6 MR. OLANIRAN: Right.

7 JUDGE YOUNG: Population as per this is
8 4,307?

9 MR. OLANIRAN: Correct.

10 JUDGE YOUNG: So he studied probably it's
11 something like less than 50 percent, 45 percent,
12 something like that.

13 MR. OLANIRAN: Correct.

14 JUDGE von KANN: I think he acknowledges
15 that. It's not the bottom lines. It's the problem
16 with the two lines above it.

17 MR. OLANIRAN: I'm sorry?

18 JUDGE von KANN: I think the witness
19 acknowledges he didn't study the superstations. That
20 brings the number up to 4,307. So he studied a bit
21 less than half of the total population.

22 It is this carrying the 1,838 number over

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1 that strikes all of us as a flaw because some number
2 of these superstation situations may have occurred
3 within 150 miles.

4 MR. OLANIRAN: Okay.

5 JUDGE von KANN: So you have to add that
6 to the 1,838 to get the number of the total population
7 that is the 150 miles.

8 JUDGE GULIN: It is probably true that a
9 very small percentage of the 2,469 are superstation
10 incidents within 150 miles. Probably some are. It's
11 a very small number. And I think we can all concede
12 that.

13 But your numbers are not going to add up
14 exactly correctly because of that anomaly, but there
15 are some superstations within 150 miles of the cable
16 system.

17 MR. OLANIRAN: I understand it, and I
18 stand corrected on that point.

19 BY MR. OLANIRAN:

20 Q My question to you, then, do you accept
21 that the total population of the instances of carriage
22 that you studied is less than 50 percent of the total

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1 population of distant instances of carriage?

2 A As listed here, yes.

3 Q And would you accept that for '98-2, the
4 total instances of carriage that you studied is less
5 than half of the total population of distance
6 instances of carriage?

7 A '98-2?

8 Q Yes.

9 A Based on this, it would be around half,
10 maybe a little less but maybe a little more.

11 Q Well, let's flip over to -- I don't see a
12 page indication, but five or six pages into the
13 document, where it indicates a total for '99, '98-2,
14 the total instances of carriage for '98-2 is 4,199.

15 Now, would you accept that the total
16 instances of carriage that you studied are less than
17 50 percent of the population of instances of carriage?

18 A Yes.

19 Q If I may, may I have this back?

20 A Yes.

21 Q And with that in mind, then, had you
22 included the remaining instances of carriage, that

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1 would have drastically reduced the percentage of the
2 zero to 150, would it not have?

3 A I don't know. If we accept the assumption
4 from his Honor that only a few, but I never did a
5 count. So I don't know how many. I don't know how
6 many would fall in the zero to 150 versus the greater
7 than 150.

8 MR. OLANIRAN: Okay. That's all I have.
9 Thank you.

10 JUDGE von KANN: Okay. Mr. Garrett?

11 MR. GARRETT: Good evening, Mr. DeFranco.
12 I'm Bob Garrett, and I represent the Joint Sports
13 Claimants.

14 CROSS-EXAMINATION

15 BY MR. GARRETT:

16 Q You had said earlier that the methodology
17 used this year was the same as the methodology used in
18 prior years, correct?

19 A I think I was speaking about the
20 superstations at the time, but yes, there were
21 different methodologies. I'm sorry.

22 Q I'm trying to compare the study you did

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1 for this year, 1998 and '99, --

2 A Right.

3 Q -- with the study that you did for '90 to
4 '92. Were there any differences in the methodology
5 that you used for those?

6 A I don't believe so.

7 Q So it's fair to compare the results of '98
8 and '99 with the results of '90 to '92, correct?

9 A Yes, correct.

10 MR. GARRETT: Now, let me just hand out
11 the exhibit 41 from the 1990-92 case, which we will be
12 marked as JSC Demo number 12.

13 (Whereupon, the aforementioned
14 document was marked for
15 identification as JSC
16 Demonstrative Exhibit Number
17 12.)

18 BY MR. GARRETT:

19 Q I ask if you recognize that.

20 A Yes.

21 Q Would you identify that for the record?

22 A Can I identify it?

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1 Q Yes, JSC Demo number 12.

2 A It appears to be what was called then
3 exhibit 41 from the NAB '90-'92 proceedings.

4 Q Right. And those were the results of the
5 study that you did for NAB in '90-'92, correct?

6 A Correct.

7 Q Now, let me go back to NAB's 1998 to '99
8 exhibit 13 that you were discussing with Judge Young.
9 Do you have that before you? It's the KYW map.

10 A Yes.

11 Q Just so that we're clear here, I see 11
12 dots, 11 red dots, on this exhibit 13, right?

13 A Yes.

14 Q And so those 11 dots would all be listed
15 in your table here?

16 A Yes.

17 Q And they probably all would be within 150
18 miles, right?

19 A Yes.

20 Q So if you have one signal that is carried
21 by 11 cable systems, you refer to that as essentially
22 11 distant signals, correct?

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1 A Yes.

2 Q Now, if I go back to your '90 to '92
3 exhibit 41, which is JSC Demo number 12, and I total
4 up the number of distant signals for 1990, would I be
5 right that it was approximately 2,791 distant signals?

6 A Okay.

7 Q Do you accept that number?

8 A Yes.

9 Q For 1991, it was 2,771?

10 A Yes.

11 Q And for 1992, it would be 2,750?

12 A Yes.

13 Q So if we are going to compare the results
14 of your two studies here, we would see that the
15 numbers comparable to 1,947 and 2,060 would be for
16 1990 2,791, correct?

17 A Yes.

18 Q And for 1991, 2,771, correct?

19 A Yes, correct.

20 Q And for 1992, 2,750, correct?

21 A Correct.

22 Q So you would conclude, would you not, that

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1 between the period '90 to '92 and '98 to '99, the
2 number of distant signals that you were asked to study
3 has declined?

4 A Yes.

5 Q Do you know they have declined?

6 A No.

7 Q Why were you asked to study this
8 particular group of signals? Do you know?

9 A What ones particularly?

10 Q The ones that were non-superstations. Do
11 you know why?

12 A I do not except for the answer I have
13 given twice before. We were being consistent with a
14 previous study. That was the explanation.

15 MR. GARRETT: Okay. I have no further
16 questions. Thank you.

17 JUDGE von KANN: Okay. Mr. Dove,
18 anything? I think you said not, but I'll give you a
19 chance to reconsider.

20 MR. DOVE: No questions.

21 JUDGE von KANN: Okay. Any Canadian
22 questions or musical questions.

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1 MR. LOPEZ: I am going to ask a couple.

2 JUDGE von KANN: A couple? Okay.

3 MR. LOPEZ: Good afternoon. It's almost
4 evening if 6:00 o'clock is the break day. Good
5 evening, Mr. DeFranco. My name is Jeff Lopez. I am
6 counsel for the Music claimants.

7 CROSS-EXAMINATION

8 BY MR. LOPEZ:

9 Q Go back to the numbers that Mr. Garrett
10 drew up on the board. In 1990, '91, and '92, there
11 were nearly 2,800 or at least between 2,700 and 2,800
12 instances of carriage. Is that right?

13 A Yes.

14 Q That's what you did in your '90 to '92
15 study, right?

16 A Yes.

17 Q That number dropped by roughly a quarter,
18 a little more than a quarter, by 1998-1999. Is that
19 right?

20 A Yes.

21 Q I think you testified you don't know why
22 it dropped. Is that right?

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1 A Correct.

2 Q The way you studied things, the way your
3 study worked, if there were two separate cable systems
4 in 1990 that carried two distant signals, not
5 superstations, distant signals, -- we're leaving those
6 out -- for those signals, they would turn up as four
7 instances of carriage in the year 1996. Is that
8 right?

9 A If there were two cable systems and each
10 cable system carried two different stations, yes.

11 Q Right. And if they had consolidated
12 between 1992 and 1998 so that they formed a single
13 cable system and the still consolidated cable system
14 still carried two, how would that be, the same two
15 signals, identified in your 1998 and 1999 --

16 A If that was the universe and one cable
17 system appeared out of a database, then it would go
18 from four to two instances.

19 Q So that would result in an overall
20 diminution of instances of carriage under your
21 methodology, even though --

22 A In that example, yes.

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1 Q De facto as far as what was on people's
2 television screens. And there wouldn't have been any
3 change under my hypothetical. Is that right?

4 A In that example, yes.

5 Q You indicate in your study that there has
6 been a change from 1991 and '92 from 87.6 percent up
7 to 89.2 percent. I'm looking at page 3 of your
8 testimony, the third and fourth lines.

9 A I'm sorry? Are you looking at an exhibit
10 or the testimony?

11 Q The testimony.

12 A What page?

13 Q Page 3.

14 A Yes.

15 Q And it says, -- supposedly we're comparing
16 apples and apples here -- there was 89.2 percent for
17 '98-2 and 89.2 percent for '99-2. And the comparable
18 percentage for 1992-2 was 87.6.

19 A Yes.

20 Q When you say it's a "comparable
21 percentage." are you implying that this is really an
22 apples to apples comparison?

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1 A I'm implying that the methodology
2 concerning the databases, database of pairs of
3 information, the methodology we use against that
4 database is comparable, yes.

5 Q Okay. Is there any conclusion that you
6 can offer as to the significance of it increasing from
7 87.6 percent in 1992 to 89 percent in 1998-1999?

8 A No, no.

9 Q When you exclude the superstations from
10 your analysis, how does that exclusion process work?
11 At one point in time, are the superstations identified
12 in any data that you look at and then you pull them
13 out or by the time you get it, are the superstations
14 already gone?

15 A The beginning of the process, we remove
16 the superstations.

17 Q Okay. So if, for example, you had a cable
18 system in your 1992 study that carried superstation
19 WTBS and no other distant signal, you would have just
20 eliminated that from your 1992 study. Is that right?

21 A Based on the fact that there was a
22 superstation attached to it, yes.

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1 Q If that same system carried WTBS and one
2 other distant signal, non-superstation, it would be
3 listed as one instance of carriage. Is that right?

4 A Correct.

5 Q You're aware that in between your two
6 studies, 1992 and 1998, WTBS was no longer carried as
7 a distant signal predominantly at least. Is that
8 correct?

9 A Vaguely aware.

10 Q Superstation I think it said, distant
11 signal. If that same cable system replaced WTBS with
12 a second distant signal so it still carried two
13 distant signals, not replace it with a superstation --

14 A I'm sorry. Start that example again.

15 Q Same cable system. In 1992, it had WTBS
16 as one distant signal.

17 A Yes.

18 Q Non-superstation as the second distant
19 signal. That counts as one under your system, right?

20 A Correct.

21 Q In 1998, it's replaced WTBS because WTBS
22 is no longer a superstation with another

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1 non-superstation distant signal. So it still has the
2 same second distant signal it had from 1992. And now
3 it has a replacement distant signal. It counts as two
4 this time. Is that right?

5 A Correct.

6 MR. LOPEZ: I have no further questions.
7 Thank you, sir.

8 JUDGE von KANN: Has that prompted some?
9 Let's see. Have we finished over here? Canadians
10 have no questions? Okay. I guess we actually start
11 at the top of the batting order again and see if Mr.
12 Lazarus has anything further.

13 MR. LAZARUS: You haven't had enough from
14 me today? No questions, Your Honor.

15 JUDGE von KANN: Okay. Mr. Garrett?

16 FURTHER CROSS-EXAMINATION

17 BY MR. GARRETT:

18 Q Mr. DeFranco, I asked you earlier whether
19 you knew why the numbers had changed, and you said you
20 did not know, correct?

21 A Correct.

22 Q And Mr. Lopez has suggested an

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1 explanation, correct?

2 A Correct.

3 Q Do you think that is a valid explanation
4 that he has suggested, consolidation?

5 A It's a possible explanation.

6 Q Let me throw some more facts out here. If
7 one were allowed to look at 12-X --

8 JUDGE von KANN: Sounds vaguely like
9 Milford, Delaware again, but go ahead.

10 MR. GARRETT: It does happen.

11 BY MR. GARRETT:

12 Q Let's just take the end of the accounting
13 period. It's 99-2. There were 2,287 Form 3 cable
14 systems. Assume that for me.

15 A I'm sorry? Where is that number again?

16 Q It's coming from an exhibit --

17 A Oh, okay.

18 Q -- that has been put in the record here.
19 It's NAB exhibit 12-X. It's the Larson data. It's
20 also the basis of --

21 A I'm sorry? Two thousand two hundred and
22 eighty-seven?

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1 Q Form 3 systems.

2 A Cable systems.

3 Q And in '98-2, that number was 2,365. Will
4 you assume that with me?

5 A Yes.

6 Q And for '92-2, the number of Form 3 cable
7 systems was 2,272 and for '91-2, 2,202 and for '90-2,
8 2,124.

9 JUDGE YOUNG: These are only form 3?

10 BY MR. GARRETT:

11 Q These are just Form 3 cable systems,
12 which, as I understand, is all that you studied,
13 correct?

14 A Correct.

15 JUDGE YOUNG: Forty-one ninety and 4,307
16 would have been all cable? Oh, no, no, no.

17 MR. GARRETT: That's instances of
18 carriage.

19 JUDGE YOUNG: I get it now.

20 MR. GARRETT: So that if one of these
21 cable systems was carrying two, it would be counted
22 double down there.

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1 BY MR. GARRETT:

2 Q Does that suggest that insofar as the Form
3 universe is concerned, that consolation would have
4 a substantial effect on the decline?

5 A I'm sorry. Was that a question?

6 Q Yes.

7 A Can you repeat it?

8 Q Yes. If we assume those numbers are
9 accurate over there on the right, --

10 A Right.

11 Q -- does that suggest to you that the
12 consolidation Mr. Lopez talked about was responsible
13 in any way for the decline in the number of distant
14 signals studied in your earlier study versus the
15 current study?

16 A Again, it's a possibility I haven't
17 studied. Maybe there are other possibilities that we
18 haven't thought of yet I can't think of sitting here
19 on the stand or I have been asked to think about. So
20 it's possible, yes.

21 Q Would one of those possibilities be that
22 cable operators simply dropped the distant signal?

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1 A If a cable system dropped a distant signal
2 that it had listed before, I would have one less the
3 second time, yes.

4 Q And if a cable system had reclassified a
5 distant signal from distant to local as a result of
6 certain legislative changes pursued by one of the
7 parties in this proceeding, would that also result in
8 a decline?

9 A Yes.

10 Q So those are also possibilities?

11 A Correct.

12 Q But the total number of Form 3 systems
13 doesn't show any marked decline during the period '90
14 to '92 to '98 to '99, does it?

15 A No.

16 MR. GARRETT: Okay. Thank you.

17 JUDGE von KANN: Anyone else? Mr.
18 Lazarus?

19 MR. LAZARUS: Yes, one brief thing, Your
20 Honor.

21 REDIRECT EXAMINATION

22 BY MR. LAZARUS:

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1 Q Mr. DeFranco, I want to put another number
2 up on the board here. While the other numbers are put
3 up here, I am going to tell you what this one would
4 represent.

5 In 1992-2, do you know what the entire
6 universe of Form 3 systems would be?

7 A No.

8 Q I am going to now show you the same
9 exhibit that we have been reading a lot off of. You
10 should be able to read the number that should be the
11 total number of distant instances of carriage.

12 A Seven thousand, four hundred and ninety.

13 Q Thank you.

14 JUDGE von KANN: What is it you have
15 identified?

16 MR. LAZARUS: This is again Program
17 Suppliers exhibit 6-X.

18 JUDGE YOUNG: And where did you have him
19 read from?

20 MR. LAZARUS: I was having him read from
21 the 1992-2, the total instances of carriage, similar
22 to numbers put up by Mr. Latterin from '98-2 to '99-2

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1 except for '92-2.

2 JUDGE YOUNG: Where would that be?

3 JUDGE von KANN: That is total instances
4 of carriage, both distant and non-distant signal. Is
5 that what it means?

6 MR. LAZARUS: That would be distant
7 instances of carriage.

8 JUDGE von KANN: It's distant. I thought
9 we had 4,307. Oh, I'm sorry. That was for '92.

10 MR. LAZARUS: This would be for 1992.

11 JUDGE von KANN: Okay. And it was 7,490?

12 MR. LAZARUS: Yes.

13 JUDGE von KANN: Okay.

14 BY MR. LAZARUS:

15 Q Mr. DeFranco, could you please turn to
16 exhibit 3, please?

17 A This one here?

18 Q Yes. That would be NAB exhibit 3. Excuse
19 me. If you were to add up the line entitled "Network
20 affiliates" and the line titled "Non-superstation
21 independent stations," would that come to
22 approximately the number that -- I just want to make

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1 sure that I am looking at the right number -- Mr.
2 Garrett wrote up on the board for the different years
3 in blue?

4 A Yes.

5 MR. GARRETT: I added up what, again, Mr.
6 Lazarus?

7 MR. LAZARUS: You added up the "Network
8 affiliates" line, which is in gray, and the
9 "Non-superstation independent" line, which is in blue.

10 BY MR. LAZARUS:

11 Q Would those numbers come to approximately
12 the years and numbers that Mr. Garrett just wrote up
13 on the board?

14 A If I am reading it correctly, network
15 affiliates looks like approximately 1,500
16 non-superstation; independent stations, approximately
17 1,200. So you put them together, it's 2,700. So
18 these numbers?

19 Q Yes.

20 JUDGE YOUNG: That is the non-superstation
21 instances of distant carriage for those year, correct?

22 THE WITNESS: That is the way I understand

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1 this chart.

2 BY MR. LAZARUS:

3 Q And if you did that for '98 and '99,
4 similar? Would it still apply for the same? If you
5 added up those two lines, it would still apply for the
6 numbers that Mr. Garrett wrote up on the board?

7 A Yes.

8 JUDGE YOUNG: That Mr. Garrett wrote up on
9 the board or just --

10 MR. LAZARUS: I think Mr. Garrett wrote
11 those up on the board. Okay. I guess Mr. Garrett
12 wrote the ones on the left and Mr. Latterin on the
13 right. But they represent the same, the same figure.

14 MR. GARRETT: So the record is clear, I'm
15 not sure exactly what he's referring to, but the
16 numbers on the bottom left in blue there are the
17 numbers that are taken directly from Mr. DeFranco's
18 '90 to '92 study.

19 And they're meant to compare the numbers
20 in black up at the top, which are taken directly from
21 his '98 to '99 study.

22 MR. LAZARUS: Yes.

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1 BY MR. LAZARUS:

2 Q So the only two of these lines that you
3 studied in your analysis --

4 JUDGE von KANN: When you guys do
5 briefings, this section of the transcript will be a
6 real joy. You will have a lot of fun with this part.

7 Go ahead.

8 BY MR. LAZARUS:

9 Q The only two of these lines that you
10 studied for your analysis would be the "Network
11 affiliates" line and the "Non-superstation independent
12 stations" line?

13 A Yes.

14 Q You wouldn't have studied the
15 superstations?

16 A Correct.

17 Q And you also would not have studied the
18 educational stations?

19 A Correct.

20 Q And you also would not have studied the
21 Canadian stations and/or Mexican stations?

22 A Correct.

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1 Q So you would actually have no idea whether
2 any of the superstations, of the Canadian stations, of
3 the Mexican stations, or the educational stations fell
4 within zero to 150 miles?

5 A Correct.

6 JUDGE von KANN: That one went by me a
7 little bit quickly. I think at this time of day,
8 everything does. I didn't understand you had excluded
9 educational stations from your study. Why was that
10 done? I understand the superstations. You are trying
11 to be consistent with a past study that didn't have
12 superstation. Why were educational stations?

13 THE WITNESS: I think I answered the
14 question when I said "commercial stations," but I did
15 not try it or attempt it. I don't know why
16 educational stations would be. It was just part of
17 the analysis parameters.

18 JUDGE YOUNG: This was the task given to
19 you?

20 THE WITNESS: Correct.

21 JUDGE YOUNG: Only U.S. commercial
22 stations?

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1 THE WITNESS: Correct.

2 BY MR. LAZARUS:

3 Q So the 4,307 number that is underneath the
4 '99-2, that would include superstations, the
5 educational stations, the Canadian stations, and the
6 Mexican stations?

7 A Correct.

8 Q And the low-power stations as well?

9 A Yes.

10 MR. LAZARUS: All right. Thank you.

11 JUDGE von KANN: Is there anything further
12 from anyone? Okay. I guess that concludes our
13 business for the day.

14 MR. GARRETT: Just one matter.

15 JUDGE von KANN: Okay. Does it involve
16 this witness?

17 MR. GARRETT: Oh, no, no, no, no, no.

18 JUDGE von KANN: Let him leave. Mr.
19 DeFranco, thank you. You are off the stand. Get out
20 of here quickly before they think of something else is
21 always a good rule.

22 (Whereupon, the witness was excused.)

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1 JUDGE von KANN: Okay, Mr. Garrett? More
2 paper.

3 MR. GARRETT: I introduce JSC exhibit
4 13-X, which is Milford, Delaware, which I promised to
5 give you earlier today. It is being introduced as
6 simply impeachment of Mr. Stewart.

7 (Whereupon, the aforementioned
8 document was marked for
9 identification as JSC Exhibit
10 Number 13-X.)

11 MR. STEWART: I wasn't even elected yet.

12 JUDGE von KANN: So it's offered for
13 impeachment purposes?

14 MR. GARRETT: Yes, Your Honor.

15 JUDGE von KANN: All right. Any
16 objection? I guess this was discussed or Milford was
17 discussed somewhat with Mr. Alexander.

18 MR. GARRETT: Just so to make it clear,
19 there will actually be two systems on each page
20 because that is the way the data comes, but there is
21 one page that has Milford for '92-2, one for '98-2,
22 and one for '99-2.

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1 JUDGE von KANN: Okay.

2 MR. GARRETT: And if you can't figure out
3 what it all says, I'll be happy to explain it.

4 JUDGE von KANN: It's not an uncommon
5 problem.

6 Yes, Mr. Stewart?

7 MR. STEWART: I haven't managed to get my
8 copies made yet, but I have some supplement to the
9 record as well for the same purpose.

10 JUDGE von KANN: Okay.

11 JUDGE YOUNG: Let me just ask Mr. Garrett.
12 This JSC 13-X shows that Milford, which is a cable
13 system, carried KYW as a distant signal?

14 MR. GARRETT: In 1992-2, that's what you
15 see on the very first page.

16 JUDGE YOUNG: Right.

17 MR. GARRETT: Here it is a partially
18 distant signal in '92-2, did not carry it in '98-2,
19 either as a distant or a local signal, and did not
20 carry it as either a distant or a local signal in
21 '99-2.

22 JUDGE von KANN: Okay. I guess that

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1 brings us to a close today. We will start at 9:30
2 with Dr. Roscoe, I understand. Okay. Thank you.

3 (Whereupon, the aforementioned
4 document, having previously
5 been marked for identification
6 as JSC Exhibit Number 13-X, was
7 received in evidence.)

8 (Whereupon, at 6:21 p.m., the foregoing
9 matter was recessed, to reconvene at 9:30
10 a.m. on Friday, May 9, 2003.)

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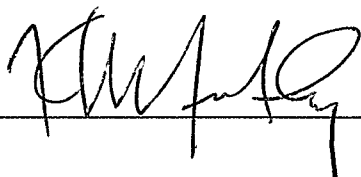
This is to certify that the foregoing transcript in
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 1998 and 1999 Cable Royalty Funds

Before: Library of Congress
 Copyright Arbitration Royalty Panel

Date: May 8, 2003

Place: Washington, DC

represents the full and complete proceedings of the
aforementioned matter, as reported and reduced to
typewriting.



1 watched. It just means that Nielsen didn't pick up
2 enough viewers to register. And your question raises
3 the whole other issue of -- and it is a separate
4 issue.

5 But it is the reliability of the rating
6 services, and to give you just a brief look at that,
7 in Philadelphia, with a population of 4 million plus
8 people, there are roughly 450 meters scattered around
9 in that market that record viewers and translate with
10 weighting to what the ratings -- to who is watching.

11 And when you consider a number of factors
12 -- for example, the meter that sits on your television
13 set at home that is supposed to record who is
14 watching, and you consider that there are a number of
15 people who will turn the set on in the den, but they
16 are out in the back yard.

17 Or someone who will have it on in another
18 room, but they are not there. It begins to at least
19 raise the question of how accurate is this tool.
20 Without question, it is the most often used source for
21 measuring audience levels. But it is not a perfect
22 mouse trap by any stretch.

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1 JUDGE YOUNG: But you do make decisions
2 based on that?

3 THE WITNESS: Yes.

4 JUDGE YOUNG: So during the period of time
5 -- and I am not quite sure what the period is, and you
6 may have to help me here, but there was a period of
7 time, sometime in the '90s, when some of these
8 competitors that Mr. Olaniran was referring to, such
9 as the local cable news providers, the national cable
10 news providers, the internet news sites, there was a
11 period of time at which they came into being.

12 THE WITNESS: Correct.

13 JUDGE YOUNG: From that period of time
14 through '98 and '99 did you discern any change in the
15 ratings for your local news stations? And I know that
16 you were two stations during that period of time.

17 THE WITNESS: Right.

18 JUDGE YOUNG: So you can talk about both.

19 THE WITNESS: Yes. I will start with WJZ.
20 The answer is that even if there had been no external
21 additional competition, ratings tend to fluctuate up
22 and down, depending on news stories, talent changes,

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1 whatever they might be.

2 So there would be changes that way
3 regardless of competition. The same thing at KYW.
4 When you factor in the other competition to respond
5 accurately to your question, you would really have to
6 look at the whole news -- the local news market,
7 before the competition and after the competition.

8 JUDGE YOUNG: Meaning other stations as
9 well?

10 THE WITNESS: Correct, because one station
11 could lose audience, and it could have zero to do with
12 the external competition, and more to do with their
13 other local broadcast competition.

14 JUDGE YOUNG: Okay. So let's take it one
15 step at a time.

16 THE WITNESS: Okay.

17 JUDGE YOUNG: On your terms during that
18 period of time, do you have any knowledge as to what
19 was going on, or what was the impact as reflected in
20 the ratings on the overall local news broadcast
21 market?

22 THE WITNESS: Okay. During this time,

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1 which again was in our business a long time ago, there
2 was very little change in ratings for the time that it
3 was in WJZ, and again I am speaking for the station
4 itself, and also the local news pie itself.

5 JUDGE YOUNG: Was there any change?

6 THE WITNESS: To the best of my
7 recollection, there probably was a little.

8 JUDGE YOUNG: Negative?

9 THE WITNESS: A little negative.

10 JUDGE YOUNG: And by little you mean what?

11 JUDGE VON KANN: Infinitesimal.

12 JUDGE YOUNG: Minuscule.

13 THE WITNESS: Minuscule.

14 JUDGE YOUNG: But I guess it is important
15 because we are dealing with percentage points, and --

16 THE WITNESS: I understand. I would to
17 the best of my recollection suggest that it was
18 minuscule. In Philadelphia, again, during this time,
19 looking at the local news block, the local news block
20 of ratings, I would say again a small decrease in that
21 local news block during that time.

22 JUDGE YOUNG: And actually to be more

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1 precise in terms of the time frame, since part of what
2 we are doing here is looking for changes from 1992
3 through 1998-1999, is your answer similar?

4 THE WITNESS: Right. It may have grown a
5 little bit more from the smaller time period to the
6 larger.

7 JUDGE YOUNG: I am not sure what that
8 means.

9 THE WITNESS: The decrease may have grown
10 more from '92 to '98 than it was in that first period
11 that you identified.

12 JUDGE YOUNG: Okay. So it is a decrease
13 between '92 and 1998-1999. On the other hand, is it
14 still what you would characterize as minuscule? It is
15 minuscule plus?

16 THE WITNESS: Minuscule plus.

17 JUDGE YOUNG: And actually we should be
18 precise. What do you mean by minuscule and minuscule
19 plus?

20 THE WITNESS: I would need to consult the
21 ratings to give you an accurate answer on that, but
22 several rating points. And again I would like to be

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1 more precise. I just don't have that knowledge off
2 the top of my head.

3 JUDGE YOUNG: Now, when you say several
4 rating points, what would be a rating that a good news
5 show, local news show, broadcast station, would get in
6 1992?

7 THE WITNESS: Again, are you talking about
8 the two markets that -- Philadelphia and Baltimore, or
9 are you --

10 JUDGE YOUNG: Well, let me rephrase that.
11 When you say a couple of rating points, I am not sure
12 how to evaluate that. I am trying to figure out does
13 that mean it is two rating points off 12, which means
14 it is one-sixth, or a 16 percent change; or is it two
15 rating points off a hundred, which means a 2 percent
16 change?

17 THE WITNESS: In market by market, and I
18 am trying to get to your answer, Judge Young, market
19 by market, it differs. You could have a station in a
20 particular market that is truly dominant, and they
21 could be on a methodology with Nielsen, a diary
22 methodology, which again it is -- a lot of the

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1 questions that we are dealing with have to do with the
2 rating services.

3 But again very briefly, diary methodology,
4 which existed in large part in the early part of the
5 time that we are talking about, meant that you as a
6 Nielsen family would get a diary that you were asked
7 to fill out for a week's period of time.

8 Every time you changed the channel, put
9 down what you changed to, and how long you watched it.
10 And who was in the room and who watched it. That is
11 asking an awful lot. Those markets who still have
12 diaries, and there are some who do, tend to have
13 larger shares of market because it is a top of mind
14 game at that point.

15 You are really not probably as a typical
16 Nielsen family going to religiously sit there. I
17 mean, you might, and fill it out each time. More
18 often than not --

19 JUDGE YOUNG: I am pretty anal.

20 THE WITNESS: Okay. Well, I will talk
21 about your neighbor then.

22 (Laughter.)

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1 THE WITNESS: A typical diary respondent
2 would have more of that reaction, and at the end of
3 the week I will fill out --

4 JUDGE YOUNG: Send the check.

5 THE WITNESS: Send the check, which by the
6 way is probably four dollars or five dollars, or
7 something like that. Another minuscule amount.

8 JUDGE YOUNG: I might not be so anal then.

9 THE WITNESS: There is no big bonus for
10 filling these things out. But my point is that at the
11 end of the week under the diary method, more often
12 than not people would fill in what they thought they
13 watched that week.

14 So top of mind, well promoted stations,
15 tended to come out with very large ratings.

16 JUDGE YOUNG: Well, let me change it a
17 little. I understand what you are suggesting, which
18 is that there are imperfections to the rating system.

19 THE WITNESS: Right.

20 JUDGE YOUNG: And that may create
21 distortions, and that there are also imperfections --
22 well, not so much imperfections to the ratings, but

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1 the ratings may not tell -- may not isolate causes as
2 you relate to one particular station, which may have
3 a variety of reasons why ratings fluctuate.

4 THE WITNESS: Right.

5 JUDGE YOUNG: But taking that all into
6 account, you said a few minutes ago that if one looked
7 at -- and I think you started with Baltimore, that the
8 market in Baltimore between '92, and then on the other
9 hand 1998-1999, the ratings for local news generally
10 would have been down two points.

11 And my question is what does two points
12 represent? Does that represent generally a 5 percent
13 decrease, a 2 percent decrease, a 10 percent decrease,
14 what?

15 THE WITNESS: Without the specifics, I say
16 generally about 5 to 10 percent.

17 JUDGE YOUNG: So, 5 to 10 percent. Was
18 that similar in Philadelphia to the extent that you
19 know?

20 THE WITNESS: To the extent that I know,
21 yes.

22 JUDGE YOUNG: And do you have any sense

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1 that that may be typically across the country, or at
2 least in major metropolitan markets?

3 THE WITNESS: Right. I have not looked at
4 that specific data, but that is a possibility that
5 that would reflect.

6 JUDGE YOUNG: And because we are talking
7 now on a market basis, as opposed to a particular
8 station, where this decrease reflects increased
9 competition --

10 THE WITNESS: It could.

11 JUDGE YOUNG: -- as opposed to the nuance
12 of a particular talent problem or other particular
13 issues?

14 THE WITNESS: Generally speaking, yes.

15 JUDGE YOUNG: Thanks.

16 JUDGE VON KANN: Mr. Stewart.

17 REDIRECT EXAMINATION

18 BY MR. STEWART:

19 Q I have several questions on redirect.
20 First of all, do you recall being asked about the use
21 of music at the beginning, and sometimes at the end of
22 a newscast?

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1 A Yes.

2 Q In your experience, comparing news
3 programs, newscasts, to syndicated series and movies,
4 is the amount of music used in newscasts more the same
5 or less than the amount of music generally used in
6 syndicated series and movies?

7 A I would say generally less.

8 Q You mentioned a program, Evening Magazine,
9 as an example of a case in which there was shared
10 content to create a single program?

11 A Yes.

12 Q Do you recall that?

13 A Yes.

14 Q Was Evening Magazine off the air by 1998-
15 1999?

16 A In most markets it was off. It still is
17 on the air, I believe, in San Francisco.

18 Q That was not a program that KYW or WJZ had
19 in 1998 or in 1999?

20 A I believe that is correct.

21 Q Okay. Now, Mr. Garrett talked to you
22 about a map that had been put into evidence in a prior

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1 proceeding, and asked you to comment on his
2 representation that the number of cable systems that
3 carried KYW as a distant signal had reduced between
4 1992 and -- on the map that you showed here?

5 A That's correct.

6 Q I am going to put in front of you a map
7 that was a part of NAB 1990-1992 Exhibit 20., which I
8 believe is the map to which Mr. Garrett was referring.
9 And I would like you first to compare it to Exhibit 13
10 in this exhibit, and look at North Jersey, and the
11 1990 to '92 version there, there were five North
12 Jersey communities listed; is that right?

13 A That is correct.

14 Q And they go as far as Mendham Township and
15 Washington Borough on the north; and then looking to
16 Exhibit 13, are those still carrying KYW? Were those
17 still carrying KYW in 1999?

18 A Most were not.

19 Q Okay. And then there is one South Jersey
20 town, Beach Haven, which carried it in '92, and what
21 other towns carried it in New Jersey, the cable
22 systems that are carried in New Jersey now, or that is

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1 in 1999, in Exhibit 13?

2 A Beachwood and Bonneycut Light.

3 Q Okay. Now, look at Northeastern
4 Pennsylvania and read the names of the towns in
5 Pennsylvania, the cable communities in Pennsylvania
6 that carried it in 1992 on the Exhibit 20 map.

7 A The Exhibit 20 map is 11 On Mill Creek
8 (phonetic) as one, and Mount Carmel, Bloomsburg,
9 Wilksberry, Hazelton, and Manhanoi City.

10 Q Okay. And now looking at Exhibit 13, we
11 see 11. We don't see Mount Carmel anymore, and so
12 that appears to have been dropped. We see Bloomsburg
13 do we not?

14 A We do.

15 Q We see Wilksberry do we not?

16 A We do.

17 Q We see Hazelton do we not?

18 A Yes.

19 Q We see Manhanoi City do we not?

20 A Yes.

21 Q We also see two additional systems that
22 were not on the 1992 map there; is that right?

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1 A That's correct.

2 Q And they are?

3 A Mount Pocono, and Strasbourg.

4 Q And on a third one as well, Whitehaven?

5 A Whitehaven.

6 Q Thank you. So it appears that additional
7 cable systems in Pennsylvania carried KYW, as opposed
8 to 1992?

9 A That's correct.

10 Q Now, Mr. Olaniran talked with you about an
11 Exhibit 13-X, which was a bar testing magazine article
12 about cable news networks. Do you recall that?

13 A Yes, I do.

14 Q Would you turn to the second page of that
15 exhibit where it starts with a listing of the details
16 on regional cable news networks. Do you have that?

17 A I do.

18 Q And if you look over the first one, New
19 England Cable News, you see an entry for owner. Do
20 you see that?

21 A Yes, I do.

22 Q Is the Hurst Corporation a broadcasting

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1 company?

2 A Yes, they are.

3 Q Then own broadcast stations; is that
4 right?

5 A Yes, they do.

6 Q Looking at the next one, the owner is A.H.
7 Belo?

8 A Yes.

9 Q Is that a broadcaster as well?

10 A Yes.

11 Q Looking at the next one, Chicago Land
12 T.V., that is a Tribune Company. Do you see that?

13 A Yes.

14 Q Is that a broadcaster as well?

15 A They are.

16 Q And if you continue through this, the next
17 one is a joint venture of Cablevision, which is a
18 cable system, is that right, and Advance Newhouse; and
19 is Newhouse a broadcaster?

20 A I believe they are.

21 Q And are you aware of whether -- and in
22 fact let's look at the Washington example that was

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1 focused on, and that is News Channel 8 over on page
2 number 46, and the owner is Albritton Communications.
3 Do you see that?

4 A Yes.

5 Q And is Albritton Communications a
6 broadcaster also?

7 A They are.

8 Q So these are cases are they not in which
9 the broadcast station is obtaining new revenues
10 through the provision of news programming to the cable
11 systems in their regions; is that right?

12 A That's correct.

13 Q And do you think that a broadcaster in a
14 market entered into one of these ventures to provide
15 a 24 hour news channel to the cable operator, or to
16 the cable subscribers, that they would do so in a way
17 that cannibalized their own local newscasts?

18 A They would attempt not to do that.

19 Q So it would be a supplement and not a
20 replacement?

21 A That's correct.

22 Q Mr. Garrett talked to you about the must-

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1 carry situation, and looking back now at Exhibit 13.
2 You are familiar with the fact that the FCC rules
3 providing must-carry rights to stations allow a
4 station to insist that a cable system within their
5 local market carry the station, right?

6 A That's correct.

7 Q Now, did KYW have to insist that it be
8 carried by cable systems within its local market?

9 A Most of the cable systems wanted it.

10 Q And in fact they voluntarily carried KYW;
11 is that right?

12 A That's correct.

13 Q So calling the yellow area there the must-
14 carry market doesn't necessarily mean that the cable
15 systems in that market were forced to carry KYW does
16 it?

17 A That's correct.

18 Q You talked a couple of times about -- I
19 remember your comfortable pair of slippers analogy for
20 your sort of strategic objective or positioning
21 objective for your local newscasts. Do you recall
22 hat?

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1 A Yes, I do.

2 Q Is it the case that your efforts in that
3 regard were designed to engender loyalty among your
4 subscribers, or I'm sorry, among the viewers to the
5 news programs?

6 A Yes.

7 Q That is, to make them feel some kind of
8 personal connection to the news team that you
9 presented?

10 A That's correct.

11 Q And that is an important component of
12 developing and creating newscasts; is that right?

13 A Absolutely.

14 Q And was there research, the extent to
15 which this sort of special connection to the
16 personalities on the news team was felt?

17 A There was research and there also is the
18 reality that again people who produce news know that
19 every station has access to the news of the day
20 stories. Every station has access to what they would
21 consider discretionary stories and sports.

22 So the differentiating factor often is the

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1 talent and the way that you present the news. So that
2 comfortable pair of slippers analogy is all of those
3 things together, but it is driven by the
4 differentiating factors. In this case, the talent.

5 Q Finally, looking back at Exhibit 13. You
6 talked with several of the Judges, as well as counsel,
7 about whether carriage in one of these distant cable
8 systems outside the ADI, the Philadelphia ADI, could
9 be turned into cash in terms of additional advertising
10 sales. Do you recall that?

11 A Yes, I do.

12 Q Now, I would like you to assume with me
13 that instead of having a compulsory license that
14 allows those cable operators to take KYW and pay a fee
15 into the copyright office that then gets distributed,
16 they have to negotiate directly with the station. Are
17 you with me so far?

18 A I am with you.

19 Q And assume that you have research with
20 respect to your sellers, with respect to the buyers of
21 that product that says that of the total amount that
22 they are going to pay ultimately, the price that they

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1 are going to pay for the station, for all the programs
2 that are on KYW, they are willing to pay 14.8 percent
3 of that total price for the programs that KYW
4 produces. Do you have that in mind?

5 A I think I am following you.

6 Q Is there any reason that you would accept
7 less than 14.8 percent if you had to negotiate for the
8 carriage of the station with that distant cable
9 system?

10 A Absolutely not.

11 MR. STEWART: Thanks. I have no further
12 questions.

13 JUDGE YOUNG: You know, just focusing on
14 Exhibit 13, there are no -- other than these two sort
15 of shore communities in New Jersey, it doesn't look
16 like WKYW was picked up as a distant signal by any
17 other cable operators in New Jersey. Is that correct?

18 THE WITNESS: That's correct.

19 JUDGE YOUNG: Now, if one looks at
20 Southern New Jersey, where there is probably more of
21 a sense on the part of the residents of being
22 connected to Philadelphia, as opposed to New York, is

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1 that a correct general statement?

2 THE WITNESS: I would think so, yes.

3 JUDGE YOUNG: Do you know whether there
4 are other Philadelphia-based broadcast stations that
5 were picked up as distant signals by these sort of
6 Southern New Jersey cable operators?

7 THE WITNESS: I am not are if they are.
8 I don't know.

9 JUDGE YOUNG: Does it make sense that some
10 would be --

11 THE WITNESS: Yes.

12 JUDGE YOUNG: Would it have been the ones
13 that are carrying the Eagles, or the Phillies, or the
14 76ers, or the Flyers?

15 THE WITNESS: It could be, or it could be
16 the one that carries the market leader in
17 Philadelphia, which I regret to say was not the
18 station that was there, WPVI. It could be that that
19 strong dominant newscast was the reason as well. But
20 I don't know that they were or were not picked up
21 there.

22 JUDGE YOUNG: Do you know or did you ever

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1 try to ascertain why WKYW was not picked up?

2 THE WITNESS: I did not.

3 JUDGE YOUNG: And I think, Mr. Stewart,
4 this may be a question to you. Was the import of your
5 questioning of Mr. Alexander with respect to the
6 owners of these local news networks, since they are
7 owned by broadcasters, is that part of your claim, or
8 were you just going to your ultimate question that as
9 broadcasters they would have been cannibalizing their
10 own or the other broadcast stations?

11 MR. STEWART: And the fact that it is a
12 commercial activity engaged in by broadcasters in the
13 cable space, and in effect to make more money from
14 their news product. But, no, it is not a part of the
15 claim in this case.

16 JUDGE YOUNG: Okay. But it just had the
17 other -- your points were otherwise?

18 MR. STEWART: Correct.

19 JUDGE YOUNG: Thank you.

20 JUDGE VON KANN: Mr. Garrett.

21 RECROSS-EXAMINATION

22 BY MR. GARRETT:,

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1 Q Mr. Alexander, I would just like to have
2 the record clear here on the cable systems that
3 carried and dropped KYW during this period. Now, you
4 have in front of you Exhibit 13 from this proceeding?

5 A Yes, I do.

6 Q I am looking at NAB 1990-92 Exhibit 20,
7 which identifies 16 Form-3 cable systems that carried
8 KYW during the 1990 to 1992 period, and it identifies
9 Milford, Delaware, as one of those cable systems. Do
10 you see Milford, Delaware, on your Exhibit 13?

11 A No.

12 Q We can conclude that the Milford,
13 Delaware, cable system dropped KYW somewhere between
14 1990 and 1998 to 1999, correct?

15 A According to this documents, that's
16 correct.

17 Q Okay. And do you know why the Milford,
18 Delaware system dropped KYW?

19 A I do not.

20 Q Exhibit 20 also shows Asbury Park, New
21 Jersey, as having carried KYW>

22 JUDGE YOUNG: Focusing on Bruce

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1 Springstein.

2 BY MR. STEWART:

3 Q Do you see Asbury Park, New Jersey, on
4 your Exhibit 13?

5 A No.

6 Q And do you know why Asbury Park would have
7 dropped KYW?

8 A I do not.

9 Q Exhibit 20 also shows Avon, New Jersey, as
10 having carried KYW during the 1990-1992 period. Do
11 you see Avon, New Jersey on your Exhibit 13?

12 A No.

13 Q Exhibit 20 from the prior proceeding shows
14 Freehold, New Jersey, as having carried KYW. Do you
15 see that on your Exhibit 13?

16 A No.

17 Q Exhibit 20 also shows Mendham Township,
18 New Jersey. Do you see that on your Exhibit 13?

19 A No.

20 Q Exhibit 20 shows Washington Borough, New
21 Jersey. Do you see that on your Exhibit 13?

22 A No.

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1 Q And again you don't know why any of those
2 communities or cable systems would have dropped KYW do
3 you?

4 A That's correct.

5 Q And Exhibit 20 also shows Mount Carmel,
6 Pennsylvania as having carried KYW during the
7 1990-1992 period. Do you see Mount Carmel,
8 Pennsylvania, there?

9 A No.

10 Q Judge Young asked you about other
11 Philadelphia signals that might be carried in New
12 Jersey. Do you recall that?

13 A Yes.

14 Q And you mentioned WPVI, the market leader,
15 correct?

16 A Correct.

17 Q Would it surprise you to learn that WPVI
18 was carried on the same number of cable systems as KYW
19 during 1998; that is, on 11 cable systems as a distant
20 signal?

21 A The very same number; is that what you are
22 saying?

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1 Q The very same number. It may not
2 necessarily be exactly the same cable systems, but the
3 same number of cable systems.

4 A Not a total surprise. A minuscule
5 surprise.

6 Q Why did you think because it was the
7 market leader that it would be carried on more cable
8 systems; the market leader in what sense?

9 A News market leader.

10 Q Okay.

11 A And again the analogy that I was drawing
12 was the Baltimore WJZ dominance and how that impacted
13 those outlying areas, and making that transition of
14 thought to Philadelphia and WPVI.

15 Q It is possible for stations not just in
16 Philadelphia, but all around the country, to be the
17 market leader in a rural market that still does not
18 have more attractiveness to distant cable systems than
19 some other types of signals?

20 A It's possible.

21 MR. GARRETT: I have no further questions.

22 FURTHER REDIRECT EXAMINATION

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1 BY MR. STEWART:

2 Q The record needs to be cleared up on this
3 subject. If you look at Exhibit 13 --

4 A Yes.

5 Q -- the yellow area is the hull market of
6 Philadelphia; is that correct?

7 A That's correct.

8 Q If KYW is carried in South Jersey as a
9 local signal, it would not show up as being carried as
10 a distant signal on this map; is that right?

11 A That's right.

12 Q Do you know whether KYW was carried as a
13 local signal by systems throughout its ADI?

14 A That is my understanding.

15 Q And I want to hand you, and I only have
16 one copy, but I want to put the entire Exhibit 20 from
17 the last case in as a demonstrative exhibit just so we
18 are clear.

19 But Mr. Garrett read to you names of
20 communities, including Harrington, Delaware. Do you
21 see that?

22 A Yes.

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1 Q And on the first page of this --

2 MR. GARRETT: Well, for the record, I did
3 not read Harrington, Delaware.

4 BY MR. STEWART:

5 Q I'm sorry, Milford, Delaware, I apologize.
6 On the first page of this Exhibit 20 there is an
7 indication as to the basis of carriage of KYW on the
8 Milford, Delaware system through 1990 and 1992. Do
9 you see that?

10 A Yes.

11 Q Would you read what that is, the letter
12 that indicates the basis of carriage?

13 A X.

14 Q And the feed says that X is?

15 A Partially distant.

16 Q And if you look at the map that
17 accompanies that exhibit from 1990, you see Milford
18 down here partly in and partly out of the ADI yellow
19 patch; is that right?

20 A That's correct.

21 Q So if instead of carrying KYW as a
22 partially distant signal in 1998, Milford carried KYW

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1 as a local signal, it would not show up on your map,
2 Exhibit 13, would it?

3 A That's correct.

4 Q But it would not have been dropped by --
5 the fact that it does not appear on Exhibit 13 doesn't
6 mean that it was dropped by the Milford, Delaware
7 system necessarily does it?

8 A You are correct.

9 MR. STEWART: And I would ask leave to
10 supplement the record by submitting the entire exhibit
11 as a demonstrative.

12 (Whereupon, NAB Demo Exhibit No. 1 was
13 marked for identification.)

14 JUDGE VON KANN: Okay. Mr. Garrett.

15 MR. GARRETT: That brings up another
16 question.

17 JUDGE VON KANN: Okay.

18 FURTHER RECROSS-EXAMINATION

19 BY MR. GARRETT:

20 Q I am looking at the Larsen printout for
21 the Milford, Delaware system, and I don't see KYW
22 carried as a local or as a distant signal. Does that

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1 surprise you, Mr. Alexander?

2 A Based on this map, yes.

3 JUDGE VON KANN: Has the great Milford,
4 Delaware debate ended?

5 MR. GARRETT: Yes. I guess I will just
6 ask for leave to put the Larsen printout in the record
7 as well.

8 JUDGE VON KANN: All right. When you both
9 have your act together on that, come back to us, and
10 we will do it. Any final questions for Mr. Alexander
11 from anybody? Are we all straight? Okay. Mr.
12 Alexander, thank you very much, and you are excused,
13 and we will resume at 2:15.

14 (Whereupon, at 1:17 p.m., a luncheon
15 recess was taken until 2:19 p.m.)

16 JUDGE von KANN: Okay?

17 MR. OLANIRAN: Yes. Thank you very much.
18 Sorry for the delay.

19 WHEREUPON,

20 MARK FRATRIK

21 was called as a witness by Counsel for the Defendant,
22 having already been duly sworn, assumed the witness

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1 stand, was examined and testified as follows:

2 CROSS EXAMINATION

3 BY MR. OLANIRAN:

4 Q Good afternoon again, Dr. Fratrik. How
5 are you?

6 A I'm just great, how about yourself?

7 Q I'm fine, thank you.

8 PARTICIPANT: He's been looking forward
9 all day to see you again.

10 MR. OLANIRAN: I can imagine. I will try
11 to get you out of here as soon as I can.

12 THE WITNESS: Appreciate that.

13 BY MR. OLANIRAN:

14 Q I wanted to get a clarification about
15 something you stated yesterday with regard to
16 information about raw minutes. You indicated that you
17 provided the raw minutes to Dr. Rosston, correct?

18 A Correct.

19 Q Okay. Now --

20 A By program category.

21 Q By program category. Okay. We'll get to
22 that in a second. Now, you recall being asked in

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1 discovery for documents underlying the percentages
2 that you indicated for each of the program categories,
3 right?

4 MR. STEWART: Just for clarification,
5 discovery requests were directed to counsel.

6 MR. OLANIRAN: I would assume that counsel
7 would share the request with the Witness. That's the
8 assumption that I'm operating under. If it's
9 different, I'd be happy for counsel to tell me that.

10 JUDGE von KANN: Well, is the question
11 here does he recall reviewing certain discovery
12 requests?

13 MR. OLANIRAN: Yes.

14 JUDGE von KANN: Well, he can answer that
15 if he does or he doesn't.

16 THE WITNESS: I recall that.

17 BY MR. OLANIRAN:

18 Q Okay. And do you recall the request with
19 regard to documents underlying the percentage shares
20 that you arrived at for the program minutes for each
21 of the program categories?

22 A I don't recall that specific one, but it

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1 seems familiar to me.

2 Q Well, it would be documents underlying
3 whatever data that you provided.

4 A Yes.

5 Q Okay. Now, did you provide the raw
6 minutes in response to that discovery request?

7 A I don't recall.

8 Q Okay. Excuse me, Your Honor, for one
9 second.

10 JUDGE von KANN: Okay.

11 BY MR. OLANIRAN:

12 Q I'm sorry. Do you recall providing the
13 raw minutes in response -- the same minutes that you
14 provided to Dr. Rosston do you recall providing in
15 response to a discovery request?

16 A I don't recall.

17 Q Okay. Does that mean that you did not or
18 that you don't recall doing it?

19 A It means I don't recall.

20 Q Okay. With respect to the document
21 referred to as the statement of Dr. Mark Fratrick,
22 which attaches to the NAB Exhibit 10, do you describe

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1 in that document -- I'm sorry. You submitted -- that
2 that document was filed with NAB's testimony on
3 December 2, right?

4 A Correct.

5 Q Now, do you recall describing in that
6 document how you calculated the raw minutes?

7 A I don't believe in Attachment 10, which is
8 my report, which was submitted on December 2, there
9 was any discussion of the raw minutes, calculation of
10 the raw minutes.

11 Q Okay. Now, you remember JSC Exhibit 6-X
12 from yesterday?

13 A I have them all here, so if you give me a
14 second, I will remember it very quickly. Yes. It's
15 the enumeration.

16 Q Okay. And that's the document titled,
17 "Enumeration of Steps to Develop Program Time
18 Estimates." Do you recall when that document was
19 provided to the parties in this proceeding?

20 A It was sometime in February, I believe.

21 Q Okay. And that would be roughly at least
22 two months after you filed your initial testimony.

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1 A That's correct.

2 Q And that would also -- if you know, would
3 that be after the discovery period had ended?

4 A I have no idea what that term means. I
5 can't answer what that means.

6 Q That's okay. That's okay.

7 A Thank you.

8 Q But it is in that document that you for
9 the first time actually explain how you arrive at the
10 raw minutes, is it not? You have that document in --

11 A Let me answer that question. It is the
12 first time that I put it to paper how I calculated
13 those raw minutes, yes.

14 Q Okay. And in fact you had that
15 information at the time when you filed your testimony,
16 did you not?

17 A I did not have this document written at
18 the time I filed my testimony.

19 Q I understand that, but you had information
20 about how you calculated your numbers --

21 A Right.

22 Q -- at the time you filed your testimony.

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1 A I had information because I was the
2 originator of the data, so obviously I knew at that
3 time.

4 Q And in fact the raw minutes you provided
5 to Dr. Rosston had to be provided in advance of filing
6 the testimony, because he relied on those numbers to
7 do his regression analysis?

8 A Correct.

9 JUDGE von KANN: I think this has a
10 familiar ring, Mr. Olaniran. I don't know if it was
11 you or a prior, but I think he's already given that
12 testimony if I recall.

13 MR. OLANIRAN: Actually, I don't know that
14 he has. I just wanted to establish that that was
15 actually the first time --

16 JUDGE von KANN: Okay.

17 MR. OLANIRAN: -- that we got an
18 explanation of how he did his calculation -- detailed
19 explanation I should add, I guess.

20 Dr. Fratrik, what was the purpose of your
21 study?

22 THE WITNESS: The purpose of my study was

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1 to compare the programming categories carried on add-
2 on distant signal stations in 1992 as compared to 1998
3 and '99.

4 BY MR. OLANIRAN:

5 Q Did you establish the purpose of this
6 study or did someone ask you to specifically take a
7 look at program time?

8 A Counsel asked me to take a look at program
9 time and the category that I just described.

10 Q Okay. What were you looking to establish
11 with this study?

12 A I was looking to evaluate the changes, if
13 there were any changes, in the program categories of
14 the programs that were add-ons for stations that were
15 carried at distant signals.

16 Q Do you think your study accomplished that?

17 A Yes, I believe it did show that there was
18 a change.

19 Q Okay. Do you think the results of your
20 study can be translated into a measure of program
21 category valuation?

22 A I wasn't asked to do that, and it could be

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1 used as one input into it.

2 Q You said that it could be used as one
3 input into it. As a component of value, is that what
4 you're saying?

5 A It could be part of the valuation process.

6 Q And on what basis do you make that
7 statement?

8 MR. STEWART: Objection. The Witness'
9 testimony was about a study that he presented.
10 Counsel just asked the Witness whether he decided to
11 do the study or whether he was asked by -- he
12 testified he was asked by counsel. Counsel for
13 Program Suppliers then asked him would this be a
14 component of value, and the Witness replied he wasn't
15 asked to do that. Now we have some speculative line
16 of cross examination that again does not relate to
17 this Witness' testimony and in fact it's been
18 addressed with Dr. Ducey. I'm assume it's going to be
19 addressed with Dr. Rosston who does address those
20 issues.

21 MR. OLANIRAN: Actually, I think the
22 Witness responded that the results of his study could

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1 be part of what you evaluate, how you value the
2 program, and I was just asking what his basis was.

3 JUDGE von KANN: Let us talk for a second.

4 (Bench conference.)

5 JUDGE von KANN: Sustained.

6 BY MR. OLANIRAN:

7 Q You indicated yesterday that you used a
8 company called TV Data?

9 A Correct.

10 Q And it is basically from the information
11 provided by TV Data and Cable Data that you
12 constructed the study, correct?

13 A Correct.

14 Q And the information from TV Data included
15 the list of program titles, information about program
16 titles, right?

17 A It was information about programs. It
18 included program titles.

19 Q Okay. The start and end times for
20 programs?

21 A Yes.

22 Q Okay. Dates that they were scheduled to

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1 air?

2 A Yes.

3 Q Okay. And then you combined the
4 information from TV Data -- excuse me. The
5 information that was provided to you by TV Data, was
6 that information for all stations or simply all
7 distant stations?

8 A I provided a list to TV Data of the
9 distant signal stations, and they provided information
10 on those requested stations.

11 Q And the list that you provided to TV Data
12 would simply be the distant signal list, correct?

13 A That's correct.

14 Q And that's the listing that was provided
15 to you by Cable Data.

16 A Correct.

17 Q Okay. And from that combination of data,
18 you compiled the program minutes for the claimant
19 categories in this proceeding as well as a couple of
20 other categories that are not in this proceeding.

21 A Say that question again, please.

22 Q I said that from the information you

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1 received from TV Data and Cable Data, you compiled the
2 program minutes for the claimants in this proceeding
3 as well as other claimants, such as low power that are
4 not parties in this proceeding.

5 A There was a few steps in between combining
6 the data.

7 Q Remind us again how you handled the
8 Canadian minutes, the Mexican minutes and the low
9 power minutes in terms of calculating them.

10 A Well, the Mexican and low power let me
11 take them separately at first, okay? I obtained the
12 start and stop times for those stations from TV Data,
13 so I could know how many minutes on air they were on
14 those selected dates. And those were the minutes
15 attributed to those categories of programming.

16 For Canadian distant signal they did the
17 same thing, but after -- excuse me, let me go back to
18 the Mexican and they weighted those minutes according
19 to their distant signal subs that they reached.

20 JUDGE YOUNG: Subs, subscribers.

21 THE WITNESS: Subs, subscribers. Now you
22 see what the nomenclature comes from. And so for the

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1 Canadian I did the same thing, finding out their start
2 and stop times from TV Data Technologies, Limited, and
3 I then determined the total number of on-air minutes
4 for those selected dates. I applied the weights of
5 those distant signal stations, and then I had
6 additional information about the distribution of the
7 programming on those Canadian -- specific Canadian
8 stations, what percentage of the day they had of
9 Canadian programming, sports programming and program
10 supplier category programming. And I allocated those
11 weighted minutes by those relevant percentages.

12 BY MR. OLANIRAN:

13 Q The data that TV Data provided to you,
14 that data reflects primarily the TV schedule. Did you
15 think it was important to your study to determine
16 whether the programs that were provided -- whether the
17 programs that were listed on the schedule actually
18 aired?

19 A It's my understanding that TV Data goes
20 back and tries to check up on that data, that they do
21 try and corroborate that that programming, for the
22 most part, was aired. So, no, I did not go back and

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1 check to see if that programming was aired.

2 Q And how did you know whether or not TV
3 Data did that?

4 A I was told by TV Data that they did that.

5 Q But you did not personally check on your
6 own to see whether or not they aired?

7 A No, I did not.

8 Q Okay. And you don't know the specific
9 steps that TV Data took to determine whether the
10 programs actually aired, did you?

11 A I don't know the specific steps, but I
12 believe that TV Data tries to contact those stations.
13 They are on a periodic conversation with those
14 stations because they're always getting updated
15 information from those stations. So I don't know the
16 specific steps TV Data goes to see if those programs
17 were aired.

18 Q Would you know, for example, how the TV
19 Data information reflected programs that went over the
20 allotted time?

21 A No, I would not know that.

22 Q Would you know how TV Data handles

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1 programs that were interrupted, for example, by some
2 other programming?

3 A There were some instances in the TV
4 program data that I recall where there were programs
5 that indicated that a particular station didn't start
6 -- let me see if I can say this cleanly -- that they
7 started it in mid-program, that there was an
8 indication in one of the fields that that might have
9 been started in mid-program, and I think there may
10 have been some instances where they said that they
11 didn't finish the program.

12 Q Okay. Now, did you handle a program like
13 that that starts in mid-program? Did you still allot
14 the full length of the program?

15 A No, because the duration field that TV
16 Data had reflected the incomplete nature of that
17 program.

18 Q With respect to the program
19 categorization, you indicated that TV Data data
20 identified program categories.

21 A Program types, yes.

22 Q Program types. And then from -- and those

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1 would be the ones that are listed in Appendix 1 of
2 your testimony?

3 A Correct.

4 Q And how did you transform those categories
5 into the categories relevant for this proceeding?

6 A Well, as I point out in my testimony and
7 I think I discussed yesterday, there were certain
8 program type category, such as syndicated series. I
9 assigned that to the appropriate program supplier
10 category in another field. Did you want to know the
11 specifics of the actual programming?

12 Q I just wanted to be sure you took the TV
13 Data information and then based on I think the
14 stipulation that we discussed yesterday, and I think
15 it was PS Demo 4, which is a stipulation of the
16 parties from the last proceeding, and based on that
17 you created the CARP categories, I suppose?

18 A I would call it the CARP field. I didn't
19 create the CARP categories.

20 Q I'm sorry, the CARP field. Now, TV Data
21 did not -- did TV Data have -- strike that. With
22 respect to the categorization that was done by TV Data

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1 before you did your own categorization, did you or
2 anyone check to make sure to see if TV Data actually
3 did that correctly?

4 A No, I did not recheck their classification
5 scheme.

6 Q With regard to syndicated programs, I
7 recall you stated that -- I think you stated that you
8 checked if a particular program was on one or more
9 stations. If a local program was on one or more
10 stations, you reclassified it to syndicated. Do you
11 recall that?

12 A Right, with the minor exception of if it
13 was only aired on two stations and those two stations
14 was a parent satellite situation.

15 Q That's correct. I remember. Now, were
16 the two stations that you checked against two distant
17 signals?

18 A Yes.

19 Q Okay. Now, what did you do with programs
20 that had similar name or similar title, like news and
21 wrestling?

22 A There are some generic titles that TV Data

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1 indicated to me were commonly used generic program
2 titles, and I note them in my Footnote 10. And in
3 those cases, I did not attribute the multiple airings
4 of those titles on different stations to the program
5 suppliers category.

6 Q How did you treat those?

7 A They, for the most part, I think in all
8 cases, were all ended up being in the commercial
9 television category.

10 Q Do you have an estimate of what percentage
11 -- can you in some way -- strike that. Can you in
12 some way quantify the percentage of those types of
13 programs that ended up in the commercial television
14 category?

15 A No, I cannot.

16 Q Do you recall how your study treats a
17 program such as Parade that was scheduled to air on
18 both a distant signal and a non-distant signal?

19 A And only those two stations?

20 Q Yes.

21 A Absent any other reason among the various
22 steps that I indicate, it would probably end up being

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1 in commercial television. Now, it could be that that
2 program, Parade, listed by TV Data as a syndicated
3 show even though my data indicates it was only aired
4 on one distant signal. And in that case, I would have
5 put it in the program suppliers category.

6 Q But you wouldn't know because you didn't
7 check, right, with TV Data to see if they did or not.

8 A No. As I indicated, I just used the data
9 that TV Data provided.

10 Q Now, do you know how your study would
11 treat a telethon that was scheduled to air on a
12 distant signal and a non-distant signal?

13 A In the same fashion as your Parade
14 example.

15 Q And would that be the same for a political
16 event?

17 A Correct. Yes, the same way.

18 Q Okay. Are you familiar with the movies,
19 Ten Commandments and Jesus Christ Superstar?

20 A I've actually seen both of them.

21 Q That's very good.

22 A You're not going to ask me specific

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1 questions about those movies.

2 Q No. I'm happy to know that you actually
3 watch our shows, actually. How would you have
4 classified that in your study, those two movies?

5 A I would -- I believe that they would be
6 classified as a movie in the TV Data category, and
7 they would have been classified in the program
8 suppliers category.

9 Q How would you have classified car racing,
10 such as NASCAR, in your study?

11 A Depending upon how it was broadcast, I
12 might have classified it as syndicated. I mean if it
13 was broadcast -- if it was added on one of the non-
14 traditional, non-ABC, NBC, CBS networks, then it would
15 have been classified as the program suppliers.

16 Q Is there another way you could have
17 classified it?

18 A I'm saying that assuming that it wasn't
19 broadcast on one of those networks, assuming that it
20 wasn't broadcast on multiple stations, assuming that
21 TV Data did not indicate that it was syndicated, I
22 don't believe that was on the devotional list of

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1 programs, I would have been -- it probably would have
2 been assigned to commercial television.

3 Q How would you have treated PGA golf in
4 your study?

5 A Assuming that PGA golf was not broadcast
6 on ABC, NBC, CBS or assuming that it wasn't broadcast
7 on any other networks, assuming it wasn't broadcast on
8 more than one station, I would have classified it as
9 commercial television.

10 Q And what did you do with untitled
11 programs?

12 A I don't recall any untitled programs, but
13 assuming that there are some program titles that are
14 untitled, if they were in a particular program TV Data
15 type category that I list in my testimony, if it's
16 appropriate to put into program suppliers, it would
17 have been in program suppliers. If it was broadcast
18 -- if an untitled program was broadcast by any of the
19 non-traditional networks, it would have been program
20 suppliers. If the untitled program was added on more
21 than one station, it would have been in program
22 suppliers category. And it obviously would not have

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1 matched up with any of the devotional titles, because
2 it was untitled. So if none of those steps would have
3 happened, then it would have been placed in the
4 commercial television category.

5 Q What would you have done with a title that
6 said, "To be announced?"

7 A I think that I took those out, but going
8 through that same laundry list of steps, it would have
9 been assigned to either program suppliers category or
10 it would have been in the commercial television
11 category if there were any.

12 Q You indicated that you did not choose to
13 analyze program time yourself, is that correct?

14 A Right.

15 Q You were asked to study program time or
16 was that something that you chose to study on your
17 own?

18 A No, I was asked by counsel.

19 Q Okay. Do you know whether NAB has
20 presented previously any time-related analysis?

21 A I'm aware that NAB presented in the '78
22 and '79 I guess it was CRT proceedings at that time,

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1 there was some time study analysis using some
2 information that stations provide to the FCC as part
3 of their regulatory obligations at the time in
4 history.

5 Q Are you familiar with the specifics of the
6 methodology that NAB used in those proceedings?

7 A I'm familiar with some of the specifics.

8 Q Did anyone provide you with information as
9 to the prior CRT or CARP rulings regarding the time-
10 based studies?

11 A What do you mean the rulings on the time-
12 based studies?

13 Q The actual decisions of the CARP as
14 opposed to perhaps the filings that NAB made.

15 A I've seen the decisions and in the last
16 few days have heard references made to it and the
17 references of the tribunals to those studies.

18 Q So is it correct then to say that you were
19 aware of the criticisms that were made of the NAB
20 studies in those decisions?

21 JUDGE GULIN: Prior to the study?

22 MR. OLANIRAN: Prior to the study.

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1 THE WITNESS: No, I was not aware of the
2 criticism prior to the study.

3 BY MR. OLANIRAN:

4 Q So to the extent that those criticisms
5 could have influenced the way you conducted the study
6 -- let me start that again. To the extent that there
7 was something or some things that were identified in
8 those decisions that could have influenced your study,
9 your study would not have reflected such things.

10 MR. STEWART: Objection. My basis is that
11 as we've heard in cross examination from counsel the
12 last couple of days, the criticisms had to do with the
13 applicability of the time measure to the allocational
14 criteria. That's something that's not within the
15 scope of this Witness' testimony.

16 MR. OLANIRAN: Your Honor, I'll move on.

17 JUDGE von KANN: Okay.

18 BY MR. OLANIRAN:

19 Q You indicated, if I recall correctly, that
20 you had never used program time in this context
21 before, correct?

22 A That's correct.

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1 Q Would you have used viewing before as a
2 measure of -- and is that in the context of your
3 research?

4 A I think I discussed yesterday that I
5 occasionally calculated viewing share as a part of my
6 day-to-day obligations when I worked at the NAB.

7 Q Would you have done research in the area
8 of connecting viewing with -- viewing levels with
9 value?

10 MR. STEWART: Objection. The same
11 objection. This is not within the scope of this
12 Witness' testimony.

13 JUDGE von KANN: Let me just ask, Mr.
14 Olaniran, so we don't keep revisiting this. It does
15 seem to us that this Witness has not been offered to
16 express expert opinions on value. He's done a
17 particular study which has been used by others,
18 particularly Dr. Rosston to reach a regression
19 analysis. That witness is going to talk about value.
20 And so nibbling around the edges of him to get at
21 value seems generally to be going beyond the scope of
22 what he was offered for. If you can make a particular

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1 proffer that might persuade us to change our view, I
2 guess we'd hear you. Otherwise, I think we're going
3 to have a general approach to questions that push this
4 witness to comment upon the value implications of his
5 study are beyond the scope of his testimony.

6 PARTICIPANT: Or value implications of
7 other studies.

8 JUDGE von KANN: Or of other studies,
9 really.

10 MR. OLANIRAN: Your Honor, I believe the
11 Witness and actually Dr. Ducey both have stated that
12 while their study is not meant to be a measure of
13 value, Dr. Ducey was very clear and so has been Dr.
14 Fratrik that this study is a component of the value
15 and can be used in the process of evaluating programs.
16 I think that given those statements, I think it's
17 entirely appropriate that we at least have some idea
18 of exactly what Dr. Fratrik thinks with respect to
19 whether or not this time study relates to value. And
20 I --

21 JUDGE von KANN: Can you point to a part
22 of his direct testimony where he speaks to that? I

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1 mean he knows -- we all know that these guys are in
2 here to get more money, and the way they do that is to
3 try to persuade us that there's some evidence that
4 would suggest hiking up their share. We know where
5 it's going, but he only carries the ball a certain
6 distance down the field. He wasn't given the
7 assignment to run across the goal line. I mean he
8 knows he's going to hand it off to somebody else who's
9 going to do something with it. Whether that's
10 appropriate is really something for us to decide after
11 we hear that other witness, it seems to me. I'm sure
12 he knows it has some relationship to NAB's value claim
13 here, but he wasn't proffered on that subject, it
14 seems to us.

15 MR. OLANIRAN: I'll move on.

16 JUDGE von KANN: Okay.

17 BY MR. OLANIRAN:

18 Q Dr. Fratrik, do you consider -- I asked
19 you yesterday whether or not you consider yourself an
20 expert in statistics. I don't believe you responded
21 yes or no. Would you like to respond to that
22 question?

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1 A I believe that I -- I'll repeat the
2 statement I made yesterday. I believe I have a
3 working knowledge of statistics to apply it in my
4 study, in my analyses. Am I an expert? I don't know
5 if I pass that goal line, but I'm pretty well down
6 that field -- overused that analogy, I apologize, I'll
7 stop.

8 JUDGE von KANN: Just trying to keep a
9 sports theme.

10 THE WITNESS: I know.

11 JUDGE von KANN: Have to keep them awake
12 after lunch.

13 THE WITNESS: While you were talking I'm
14 talking about baseball analogies. I was trying to get
15 at the Cubs.

16 (Laughter.)

17 JUDGE von KANN: Okay.

18 PARTICIPANT: Well, with him you don't
19 have to get to the Cubs.

20 PARTICIPANT: That's not good news.

21 (Laughter.)

22 BY MR. OLANIRAN:

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1 Q But you do have some extensive experience
2 with sampling; is that correct?

3 A Yes, I do have that.

4 Q Would you agree that the goal of sampling
5 is to produce a representative sample of the
6 population being studied?

7 A That's exactly what sampling is intended
8 to do.

9 Q And in other words, the sample must be
10 representative of the population on all
11 characteristics except the size, correct?

12 A An attempt is made to get the sample as
13 similar in characteristics as your census.

14 Q And one would expect then a varied sample
15 to mirror at least generally the population from which
16 it was selected.

17 A One would hope that you're close to it in
18 a random sample procedure. In the randomness of
19 sampling you don't always match that.

20 Q What do you understand by random sampling?

21 A There is no pattern of selection,
22 preconceived patterns of selection. Like, for

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1 instance, every fifth one would not be a random
2 sample.

3 Q And it's what referred to in industrial
4 lingo as equal probability sampling method; is that
5 correct?

6 A That's correct.

7 Q And it means that everyone in the sampling
8 frame of has an equal chance of being selected.

9 A Correct.

10 Q Are you aware of the different types of
11 sampling techniques?

12 A I believe I am, yes.

13 Q Random sampling techniques. Could you
14 give examples of the different types?

15 A Well, as I discussed yesterday, I would
16 characterize my random sampling technique as sort of
17 a stratified random sampling technique so as I wanted
18 to make sure that I had an equal number of days from
19 each of the months of the year, I wanted to make sure
20 I had an equal number of selected days of the days of
21 the week. So I sort of stratified it in that way so
22 that the randomness was within that construct.

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1 Q You're familiar with simple random
2 sampling, are you not?

3 A Yes.

4 Q And that would be -- what kind of sampling
5 would that be?

6 A You would not place any constraints as the
7 ones I just described in terms of the months of the
8 year or the days of the week.

9 Q What about systematic random sampling?

10 A I'm not too sure what you mean by that
11 term.

12 Q You're not familiar with that term?

13 A No.

14 Q Okay. Are you familiar with cluster
15 random sampling?

16 A Cluster random sampling would be sampling
17 where you would randomly pick a day, but then you
18 would make sure you wouldn't get any days surrounding.
19 In the example of the time study, you wouldn't pick
20 any days around that, so that you wouldn't have any
21 clusters of days in the final set of dates selected.

22 Q Now, let's switch gears a little bit and

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1 talk briefly about non-random sampling. What do you
2 understand by that term?

3 A Non-random sample is you're selecting a
4 sample that -- as the one I just suggested. Every
5 fifth day would be a non-random sample. There's a set
6 pattern in how you selected it.

7 Q And do you -- have you heard of
8 convenience sampling?

9 A I'm not familiar with that term, no.

10 Q What about quota sampling?

11 A Quota sampling is sampling where you
12 guarantee that you'll have a certain number of types
13 of -- let's say in people. If you wanted to do a
14 quote sample of the U.S. population and you said,
15 okay, I want to make sure that I have 50 percent
16 female, 50 percent male, you would ensure that your
17 sample set does meet that quota.

18 Q Are you familiar with purposeful or
19 purposive sampling?

20 A I'm not familiar with that term, no.

21 Q Are you familiar with snowball sampling?

22 A No. That's a new one.

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1 Q In general, would you expect a non-random
2 sample to produce a representative sample of the
3 population being studied?

4 A I would not expect it, but it could
5 happen.

6 Q Is it generally acceptable that non-random
7 samples are representative of the population?

8 A It's generally -- I'll answer that
9 question in that reverse. It's generally accepted
10 that random sampling is the preferred way of
11 describing the population.

12 Q And would that be because a non-random
13 sample generally would not be considered a
14 representative sample?

15 A It doesn't guarantee a representative
16 sample.

17 Q Okay. Now, what do you understand by
18 random selection?

19 A If you're randomly picking out, falls out
20 of an urn. I'm sorry, I don't know if that answered
21 the question.

22 Q It's up to you.

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1 A You are selecting a sample without any
2 predesignated pattern. Anything in the census would
3 have an equal chance of being selected.

4 Q And, conversely, a non-random selection
5 would be the opposite where you would select with
6 specific --

7 A Pattern.

8 Q Okay.

9 JUDGE YOUNG: I'm sorry, is there a
10 distinction being drawn between sampling and
11 selection?

12 THE WITNESS: No. You're selecting your
13 sample. Sampling is the same as selecting a sample.

14 JUDGE YOUNG: We're just talking about the
15 distinction between random and non-random.

16 THE WITNESS: I believe that's what we're
17 talking about.

18 BY MR. OLANIRAN:

19 Q What practices do you consider in
20 determining the sample size, generally?

21 A That it's large enough to provide enough
22 information to give us a meaningful result.

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1 Q Is the idea to try to get as big a sample
2 as possible?

3 A No. You get as big a sample as could be
4 used to derive meaningful results.

5 Q Are there times where you would need a
6 larger sample rather than a smaller sample?

7 A There could be times when a small sample
8 -- or a larger sample is necessary.

9 Q And under what circumstances?

10 A It could be if you felt that the census of
11 your group is very, very diverse.

12 Q Is that the only factor you can think of,
13 I mean circumstance?

14 A It could also be if you are looking to
15 analyze many different variables in your analysis.

16 Q Can you recall any others?

17 A Not right now, no.

18 Q Could it also be that when you use a less
19 efficient technique of random sampling, it would be
20 important to use a larger sample size?

21 A I don't know what you mean by less
22 efficient technique.

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1 Q What do you understand by less efficient?

2 A Not as efficient. A non-adequate random
3 sample procedure?

4 Q Let's assume that understanding, and I'll
5 re-ask the question. Would there be a circumstance
6 under which you would prefer to a larger rather than
7 a smaller sampling?

8 A No, because if you have an inefficient
9 random sampling technique, it's not guaranteed that a
10 larger random sample inefficiently selected would
11 compensate for your inefficient process.

12 Q Do you agree that statistical inference
13 makes use of information from a sample to draw a
14 conclusion about the population from which the sample
15 was taken?

16 A I didn't hear the whole thing.

17 Q I'll read it again -- I'll say it again,
18 rather. Do you agree that statistical inference makes
19 use of information from a sample to draw a conclusion
20 about the population from which the sample was
21 selected?

22 A That's correct.

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1 Q With respect to the NAB time study, your
2 study, what were the populations that you were looking
3 at?

4 A The populations we were looking at was the
5 730 days in the two-year period in '98 and '99 and the
6 365 days in 1992.

7 Q We know that you picked practically all of
8 the distant signals, correct?

9 A We attempted to get information on all the
10 distant signals.

11 Q And that constitutes the entire population
12 with respect to the stations.

13 A Correct.

14 Q Okay. With respect to the days, you
15 picked a sample of days for each year.

16 A Right.

17 Q Correct? And do you have PSC Exhibit 6-X
18 in front of you?

19 A Yes.

20 Q And would you please look at Items 1 and
21 2 on Page 1 of that exhibit?

22 A Yes.

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1 Q Do these two items describe the selection
2 of days that you utilized in your study?

3 A I believe it does, yes.

4 Q And you describe your sampling technique
5 as random, do you not?

6 A Yes, second word.

7 Q Now, what year was selected first, was it
8 '98 or '99?

9 A I think we did 1998 first.

10 Q Now, I assume you did the selection
11 manually, it was not done by a computer; is that
12 correct?

13 A The random number was generated by a
14 computer.

15 Q What do you mean by that?

16 A There's a random number generated in
17 Excel, it's a function, and it gave me a number, one
18 through five.

19 Q And how exactly did you apply those
20 randomly generated numbers to the date selection?

21 A Well, I had -- for instance, I had January
22 1998 and I was going to do, I believe -- let me make

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1 sure I get the accurate dates right -- I was going to
2 do Saturday, Tuesday and Thursdays in January 1998.
3 I was going to pick those three dates in '98, so I
4 decided, okay, which Saturday should I pick out of the
5 four or five Saturdays in January 1998, and the random
6 number tells me one through five. So it might have
7 said two, and so I picked the second Saturday in
8 January of 1998. Excuse me, in that case, it gave me
9 one because it was the first Saturday.

10 Q So you would have it in mind specific days
11 of the week and then you would somehow instruct the
12 computer to pick any one of those days, and then the
13 computer would spit it out and that would be the date.
14 Is that a fair way to describe it?

15 A Right. I would say, okay, I now need
16 February, and I need a Sunday in February and which
17 Sunday do I pick?

18 Q So it's true then that when you were
19 selecting the dates for the first year selected, which
20 would be in '98, you had it in mind that you wished to
21 represent each day of the week; is that correct?

22 A Across the two years, yes.

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1 Q Across the two years. Okay. And how did
2 you assure that result? How did you make sure that
3 everything turned out that way? I guess my question
4 was after the computer generated the number of days,
5 did you then have to make some manual adjustments to
6 that?

7 A No, I didn't, because once I knew after
8 going through 1998 knowing that I took the Saturday,
9 Tuesday and Thursday in January of that month, I knew
10 that in '99 I was going to do the Monday, Wednesday,
11 Friday, Sunday.

12 Q So it's correct to say then that you had
13 two predetermined characteristics: One, the days of
14 the week that you wanted to select, and, two, a
15 specific time period in which you wanted those dates
16 selected.

17 A And that's what I said earlier about being
18 a stratified random sample.

19 MR. OLANIRAN: I would like to have marked
20 for identification PS 15-X, 16-X and 17-X, and I will
21 attempt to clarify that.

22 (Whereupon, the above-referred

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1 to documents were marked as
2 PS Exhibit Nos. 15-X, 16-X, 17-X
3 for identification.)

4 MR. OLANIRAN: Fifteen-X will be the
5 January of '92 calendar. Then the 1998 calendar will
6 be PS 16-X. And then 1999 calendar would be PS 17-X.

7 THE WITNESS: I'm sorry, I wasn't paying
8 attention, '92 was what?

9 BY MR. OLANIRAN:

10 Q Ninety-two would be 15-X.

11 A Ninety-eight would be 16.

12 Q And '99 would be 17-X. Dr. Fratrik, have
13 you had a chance to look at those three exhibits?

14 A Yes.

15 Q Do you recognize those exhibits?

16 A Yes.

17 Q Could you please describe them for us?

18 A These were the working documents, for lack
19 of a better phrase, that I used when I was randomly
20 selecting these dates, taking the process that I did
21 before in terms of the first Tuesday, the first
22 Thursday and second Thursday, whatever, and relating

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1 that to the actual calendars to obtain those dates.

2 Q And the dates that have the check marks,
3 would those be the dates that correspond with the
4 dates that were actually studied?

5 A I believe so.

6 Q Okay. I'd like to have PS Exhibit 15-X,
7 16-X and 17-X admitted for substantive purposes.

8 MR. STEWART: No objection.

9 JUDGE von KANN: So received.

10 (Whereupon, the above-referred
11 to documents, previously marked
12 as Exhibit Nos. 15-X, 16-X and
13 17-X for identification, were
14 admitted into evidence.)

15 BY MR. OLANIRAN:

16 Q Now, I want to direct your attention to PS
17 Exhibit 15-X, and let's look at -- that would be the
18 1992 calendar.

19 A Yes.

20 Q Let's look at February 28. Notice there
21 appears to have been a check mark which was scratched
22 out.

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1 A Right.

2 Q That's not one of the dates studied,
3 correct?

4 A No.

5 Q And would that have been a situation where
6 a decision was made to conform the selection to the
7 predetermined characteristics?

8 A No, it was not.

9 Q Why would you have scratched it out?

10 A I mistakenly thought I was doing a Friday
11 when I was doing a Wednesday on that one, and I
12 accidentally checked off the Friday box.

13 Q Okay. Let's look at May 25 of 1992.
14 Again, that appears to be something that was scratched
15 off. Would that have been a decision where you wanted
16 to conform the selection to your predetermined
17 characteristics?

18 A No, it would not.

19 Q Okay. Let's move on to the 1998 calendar,
20 which would be PS 16-X. Do you see January 1, 1998?

21 A Yes, I do.

22 Q All right. And was that also scratched

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1 off in error as opposed to --

2 A It was an error when I was transforming
3 the dates to the dates selected in the calendar, yes.

4 Q Let's go to October 22 of 1998. Same
5 explanation?

6 A Yes, sir.

7 Q Let's go to 1999, which is PS Exhibit 17-
8 X.

9 A Yes.

10 Q And let's look at November 29 of 1999.
11 Same problem?

12 A Yes. I mean I'm trying to -- when looking
13 at it, you know, I didn't notice that November 1 was
14 a Sunday, so when I saw the fourth Sunday I looked at
15 that quickly and it's the 29th, and then I carefully
16 reviewed it and I said, no, the fourth Sunday is
17 November 22 -- fourth Monday, excuse me.

18 Q Now, you stated earlier that -- did you
19 say you were or were not aware of what purposeful
20 sampling is?

21 A I wasn't aware of what purposeful sampling
22 is, no. I'm not familiar with that term.

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1 Q Let's assume that purposeful sampling is
2 a non--random sampling method, sampling technique,
3 okay?

4 A Okay.

5 Q Let's also assume that with respect to
6 that sampling technique you would make an explicit
7 choice to select certain population members with
8 certainty based on your own judgment about exactly
9 what you want to include in your sample. Do you have
10 those assumptions in mind?

11 A Yes. Sounds a little bit like quota
12 sampling, but go on.

13 Q Okay. And you would agree with me then
14 that the objective and the end results would be a
15 sample that exhibits the predetermined
16 characteristics.

17 A If done successfully, yes.

18 Q Doesn't your study actually select a
19 characteristic in the selection of the days of the
20 week?

21 A Yes. There's an equal number of days of
22 the week.

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1 Q But it is in fact a predetermined
2 characteristic, both in terms of the days of the week
3 and the period during which you want those days to
4 fall in, correct?

5 A Correct. I have a January in -- a Monday
6 in the 1998/99 group, and I have a Tuesday in that
7 grouping, Wednesday and every day of the week for each
8 month in that grouping.

9 Q Well, again, you have predetermined those
10 days, that you wanted to have the days in a certain
11 order within a specified period of time; is that not
12 true?

13 A I don't know what you mean by certain
14 order.

15 Q You wanted to have every single day of the
16 week represented, so you made sure that whatever
17 sample you ended up with exhibits those
18 characteristics.

19 A Yes.

20 Q And you also wanted to make sure for 1999,
21 I believe, that that happened every two months; is
22 that correct?

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1 A Nineteen ninety-two.

2 Q I'm sorry, for 1992. For 1998 and '99,
3 you wanted to make sure that it happened across the
4 two years.

5 A Correct.

6 Q Okay. Now, it would be unlikely, would it
7 not, that a random sample would exhibit those
8 characteristics, wouldn't it?

9 A What kind of random sample are you talking
10 about?

11 Q A simple random sample.

12 A If we would randomly have selected 84 days
13 for the 1998/99, it would be very unlikely that the
14 same number of days in each month would have been
15 selected.

16 Q If we assume the definition of purposeful
17 sampling that I described earlier, if you still have
18 that in mind, wouldn't you agree that the way that
19 you've gone about selecting the days would be
20 classified also as purposeful sampling?

21 A If what you're describing the purpose was
22 to make sure that I had every day of the week

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1 represented across the two years and an equal number
2 of days per month across the two years, then that
3 purpose was realized in my sampling technique.

4 Q If we assume that that was a purposeful
5 sample and also that purposeful sampling is a non-
6 random technique, would you accept then that the
7 sample you end up with would not be representative of
8 the population study?

9 A No, I would not do that, because I also
10 could characterize my sampling technique, as I have
11 done, as a stratified random sampling with certain
12 conditions in terms of having every day of the week
13 represented. And, thus, I feel that I had a
14 representative sample.

15 Q How do you define stratified random
16 sampling?

17 A Well, you have certain types of groups
18 that you make sure that you ensure that you get
19 adequate representation from.

20 Q Now, that definition, is that based on
21 some text or is that based on your general experience
22 as a non-statistical expert?

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1 A The latter, based on my experience and
2 knowledge of the field.

3 Q Could we turn to Page 8 of Exhibit 10, NAB
4 Exhibit 10?

5 JUDGE von KANN: Mr. Olaniran, are we
6 starting into a new area?

7 MR. OLANIRAN: Yes.

8 JUDGE von KANN: And I take it you have
9 more than one question?

10 MR. OLANIRAN: Yes, I do. Wouldn't want
11 to disappoint.

12 JUDGE von KANN: No. No. Maybe this
13 would be a good time --

14 THE WITNESS: Wouldn't disappoint me.

15 (Laughter.)

16 JUDGE von KANN: All right. Let's take 15
17 minutes here till 3:45.

18 (Whereupon, the foregoing matter went off
19 the record at 3:29 p.m. and went back on
20 the record at 3:50 p.m.)

21 JUDGE VON KANN: Okay. Let's actually
22 just take stock for a second. We do have one more

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1 witness today, who Mr. Olaniran at least wants to
2 cross examine. And also, I am presuming that we
3 really should try to reserve the full day tomorrow for
4 Dr. Rosston. He's got all this water to carry, and we
5 need to give him time to carry it -- 10 yards,
6 carrying the water -- anyway, so I think it's
7 important that we finish.

8 Mr. Olaniran, I don't know how much more
9 you had in mind with this witness and the next
10 witness, but you may -- like a kid in a candy store,
11 you can't always have it all. You may have to make
12 some choices here between the time for this witness'
13 cross and the next witness' cross, because it is
14 getting on towards 4:00.

15 MR. OLANIRAN: Okay.

16 JUDGE VON KANN: So about how much more do
17 you anticipate for --

18 MR. OLANIRAN: For Dr. Fratrik, hopefully
19 not more than half an hour.

20 JUDGE VON KANN: Okay.

21 MR. OLANIRAN: And then, as I indicated
22 earlier, for Dr. DeFranco, it shouldn't be more than

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1 half an hour either.

2 JUDGE VON KANN: Okay. Anybody, Mr.
3 Garrett, have you got six hours in mind for Dr.
4 DeFranco, or something?

5 MR. GARRETT: I'd say probably closer to
6 10 minutes.

7 JUDGE VON KANN: Oh, okay. Well, then,
8 we're -- okay. All right. Well, I think, then, we're
9 okay. Okay. Let's go ahead.

10 BY MR. OLANIRAN:

11 Q I had asked prior to the break to turn to
12 page 8 of NAB Exhibit 10. It's on that page that you
13 identify the -- what you purport to be the randomly
14 selected dates. Do you see that?

15 A Yes.

16 Q Okay. Let's look at the '92 dates first.
17 If you look at the first column, and you go about nine
18 or 10 rows down, do see where you list Saturday,
19 March 22nd of '92?

20 A Yes.

21 Q And I just wanted to make sure -- let's
22 take a look at PS Exhibit 15-X. If you look at

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1 not?

2 A That's correct.

3 Q And it discusses basically the emergence
4 of cable news networks, do you see that?

5 A Yes, I do.

6 Q I don't want to be tricky, so I'm going to
7 ask you to turn to the next page and let's go down
8 one, two, the third paragraph that starts out with
9 compressed news. Do you see that?

10 A Yes, I do.

11 Q And the second sentence states and I
12 quote, "Ratings indicate broadcasters still dominate
13 local news and their domain." And I just wanted to
14 highlight the fact that I am not contending that
15 broadcasters do not dominate the news.

16 My point, however, is that if you look
17 from the second page and you count the number of cable
18 news networks, there were 29 of them. If you accept
19 my math, that is.

20 A Okay.

21 Q I counted 29 and they are ranked in order
22 of subscribers. Do you see that?

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1 A Yes, I do.

2 Q Now you would accept, would you not that
3 while they weren't competing head to head in terms of
4 ratings with local broadcasters, they were indeed
5 competing for the same audience that you were
6 competing for?

7 A That's correct.

8 Q And it's fair to say generally from this
9 article, well, let me back up. If you go down to the
10 very last paragraph of the article on page 2, on the
11 second page, I'm sorry. See the very last sentence?
12 I mean the very last paragraph, I'm sorry.

13 A It begins with "in five areas"?

14 Q Correct.

15 JUDGE VON KANN: What are you asking about
16 that?

17 BY MR. OLANIRAN:

18 Q I thought maybe he was reading.

19 A Yes.

20 Q Okay.

21 A Okay.

22 Q Now the speaker in that paragraph is

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1 saying that while they're not going head to head, he
2 does indicate, however, that in five areas in the
3 market of 6.7 million, they're in 3.2 million homes
4 and from his perspective they're in the other half of
5 the market that the broadcaster is not.

6 Now wouldn't -- would you accept though
7 that while they may not have been competing head to
8 head, it may not have been significant competition,
9 there was, in fact, some competition from cable news
10 networks in 1998 and 1999?

11 A Yes.

12 Q And that competition, in fact, would
13 affect the level of interest, the viewing levels that
14 people had in local programming content?

15 A I would say it could affect.

16 Q Do you know, in fact, whether it did?

17 A Let me use an example that I'm most
18 familiar with.

19 Q Okay.

20 A Which is Philadelphia. They are not
1 listed here because this is dated as you pointed out,
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1 Q Correct.

2 A You may have some more updated information
3 which would be interesting also to see. But in the
4 case of Philadelphia where Comcast has CN8 is their
5 news channel. They've been in the market with a
6 locally produced news product, I believe, and I'm
7 going on memory here, maybe three years. They clearly
8 are going after our local news segment, but when you
9 ask the question how are they doing, I think they
10 would admit yes, we're glad to be in this business,
11 but we are still in a very infant stage as it relates
12 to our broadcast competitors.

13 And that is the case probably because when
14 viewers become accustomed to watching a news program,
15 it's not like a syndicated show where the genre, the
16 reality genre will got out at some point or the court
17 show genre will go out. Local news reserves a special
18 place in those people who watch it.

19 So the fact that there is another local
20 news option that surfaces is not in and of itself
21 enough to drive me from what I'm comfortable with.
22 There's no question there is additional competition.

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1 That's not in debate. The question is how successful
2 have they been over this period of time in taking
3 viewers away from the broadcasters. And I would
4 submit that in general, and I don't have data to --
5 specific data to back this up, I would say in general,
6 yes, there has been an impact, but it's less than,
7 it's another small impact, if I could use an earlier,
8 a minuscule impact at this point, at this point.

9 Q Fourth minuscule.

10 A Fourth minuscule one.

11 Q My point, if you had 100 percent of the
12 pie, and somebody comes in the room and takes 1
13 percent of the pie, you don't have 100 percent any
14 more, right?

15 A That's correct.

16 Q So we can agree then that while the impact
17 may have been minuscule, as you say, there was -- the
18 level of interest in local programming was affected by
19 competition from cable news networks?

20 A On further reflection, there is also the
21 possibility that people who were not watching
22 broadcast local news are for some combination of

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1 reasons intrigued by the cable offering, add to the
2 pie of news viewers, without taking away from those
3 who already watch broadcast stations.

4 I would submit that there are some of
5 those. There are others who probably or possibly do
6 go over, but I don't think it's all at the expense of
7 broadcasters, if I made myself clear.

8 Q Now in terms of the regional appeal of say
9 KYW, if the same cable system such as Comcast covers
10 a particular region, not only would they be competing
11 with you within the local area, they would also be
12 competing with you within their region, would they
13 not, the cable news network. So let's say CN8, for
14 example, if CN8 is available in New York, Maryland,
15 Delaware, New Jersey and CN8 will be competing with
16 you both within the Philadelphia area and within the
17 Philadelphia region, northeast region, would it not?

18 A Are you talking about the --

19 Q The subscribers.

20 A Outlying regions?

21 Q Yes.

22 A Yes.

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1 Q And let's say in the D.C. area, are you
2 aware of any cable news networks in the D.C. area?

3 A News Channel 8, I believe.

4 Q Do you know how long that has been around?

5 A I don't know exactly, but if I were to
6 guess, probably 8 years, maybe even more, I'm not
7 sure.

8 Q The nature of the competition that News
9 Channel 8 would have against a local station would be
10 the same way in that they would be competing, if
11 they're on the same system, on the same cable system,
12 they would be competing for the same subscribers?

13 A Potentially, yes.

14 Q Would you say that an outfit such as CNN
15 has also competed with broadcast television for news
16 would you not?

17 A Yes.

18 Q And that would have been the case for 1998
19 and 1999?

20 A Correct.

21 Q Would you say that the fact that CNN even
22 bothered to cover particular stories could actually

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1 create national interest, could accelerate national
2 interest in that particular story whereas before there
3 was not?

4 A That's possible.

5 Q Isn't it true that other entities such
6 other cable networks such as MSNBC and CNBC also
7 compete with local news?

8 A Yes.

9 Q Is there anyway they can quantify to what
10 extent that has affected the viewing levels in local
11 news?

12 A I don't think I can quantify it with any
13 degree of accuracy. I will say that Broadcasting and
14 Cable have covered the difficulty that MSNBC,
15 particularly, is having in attracting an audience
16 beyond the days of the big, big stories. So yes, they
17 are a competitor. The question again is how successful
18 are they and to what extent are they bringing
19 additional viewers to the pie versus taking them away
20 from the already established, already trusted local
21 stations and networks and that's a question at this
22 point.

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1 Q Again, at a minimum, it would be another
2 minuscule percentage?

3 A One more of those minuscule things.

4 JUDGE VON KANN: Is the point there that
5 when there's something very pressing going on, like
6 the war in Iraq people who want their news all day
7 long or a great deal of time are tuning to those, but
8 when that calms down and we're sort of back to the
9 normal flow, people tend to tune out from the cable
10 news and more get it from the network and local
11 stations?

12 THE WITNESS: That's exactly right.

13 By MR. OLANIRAN:

14 Q And there are also specialty channels that
15 are also competing with local broadcasters, are they
16 not?

17 A That's correct.

18 Q The Weather Service?

19 A That's correct.

20 Q Financial News channels, perhaps?

21 A Right.

22 Q And those will be on cable also?

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1 A That's correct. And if I could quote a
2 musician, Bruce Springsteen, I think the song was "57
3 Channels and Nothing to Watch."

4 (Laughter.)

5 MR. LOPEZ: We'll move the admission --

6 (Laughter.)

7 JUDGE YOUNG: Mr. Alexander, I'm just
8 thinking anecdotally a little, in New York we have New
9 York 1.

10 THE WITNESS: Yes.

11 JUDGE YOUNG: One of the advantages I have
12 observed with that is that it's on I guess all the
13 time.

14 THE WITNESS: Right.

15 JUDGE YOUNG: So --

16 JUDGE VON KANN: Is that an advantage or
17 disadvantage?

18 (Laughter.)

19 JUDGE YOUNG: It's an advantage to the
20 extent that if I want to see local news at 9 p.m. and
21 not wait until 10 or 11, I have a source.

22 THE WITNESS: Right.

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1 JUDGE YOUNG: And if I watch it at 9 p.m.,
2 it's unlikely I'm going to watch 10 or 11 p.m.

3 THE WITNESS: Right.

4 JUDGE YOUNG: Have you observed that as
5 something of a phenomena?

6 THE WITNESS: Anecdotally, you're correct
7 and it's one of the reasons that local stations have
8 websites. It's another reason that if we move away
9 from the years that we're talking about now into the
10 current day, a number of stations have added hours of
11 news through the day, for example, here in Washington,
12 WUSA and also -- which is the CBS affiliate here and
13 the NBC station have added an hour of news, I believe,
14 at 10 a.m. and you're seeing additional news product
15 being added to the local stations as time goes for
16 that very reason. We want to be able to deliver news
17 when you need it and when you want it. So you're
18 starting to see some of that, in response, perhaps to
19 the easy access of New York 1, 24 hours a day.

20 JUDGE YOUNG: So if we have though an O&O
21 like you work for which is pretty much bound between
22 8 p.m. and 11 p.m. to carry the network programming.

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1 THE WITNESS: Correct.

2 JUDGE YOUNG: So you're going to have your
3 news, local news at 11 p.m.?

4 THE WITNESS: That's correct.

5 JUDGE YOUNG: So have you observed any
6 decrease in the popularity of 11 p.m. when now there
7 are these options where I can watch news at 9 p.m. or
8 10 p.m.?

9 THE WITNESS: There's some of that and
10 using the specific of KYW, we were in a duopoly market
11 and I don't want to get into something that's totally
12 foreign to this group, but in that market Viacom
13 operated two operates, two television stations, one
14 being the CBS affiliate, the other being the UPN
15 affiliate.

16 In that market, we considered a 10 p.m.
17 news on the UPN affiliate and another news product in
18 the morning hours on the UPN affiliate. The morning
19 hours was accomplished. There was a block of news on
20 the morning at UPN and they are considering, as we
21 speak 10 o'clock news in that market.

22 So it's a response to what you mentioned,

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1 that there is some audience who want to watch news a
2 little bit earlier than others, so again, trying to
3 respond, broadcasters are coming up with solutions to
4 address that need.

5 JUDGE YOUNG: But it does reflect -- Mr.
6 Olaniran is right to some extent, at least, that
7 you're facing a competitive threat.

8 THE WITNESS: There is competition.
9 There's no question about that. No question.

10 BY MR. OLANIRAN:

11 Q And the fact that that competition
12 increased between 1992 and 1998, is that correct?

13 A The competition in general terms, yes. In
14 terms of number of players, yes.

15 Q You would agree also that the internet
16 also has played a role in the competition that local
17 broadcasters are experiencing?

18 A They are another competitor, correct.

19 Q Are you aware of a recent research
20 suggesting that the internet actually might be the
21 preferred method for finding out what breaking news
22 is?

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1 A I'm not familiar with that.

2 Q Are you familiar with the organization
3 known as Pew Research Center for the People and the
4 Press?

5 A I've heard of it. I'm not familiar with
6 it.

7 Q What context have you heard of it?

8 A I've seen the name in the trade
9 publications, but I'm not familiar with anything
10 specific.

11 Q Now Judge Young was asking you questions
12 about -- he was talking about New York 1. Now when a
13 major story is breaking at 8 o'clock at night and
14 broadcasters typically don't broadcast until 11 and in
15 some markets, I guess 10 o'clock. You can go on line
16 to find out what's going on, can't you?

17 A Certainly.

18 Q As a matter of fact, a lot of broadcasters
19 now have websites that people go to?

20 A Correct.

21 Q And to the extent people are now going on
22 line to find out what's going on, that the 11 p.m.

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1 news is not really of any value to subscribers in that
2 case, is it?

3 A But this is what happens in reality. If
4 there is a major story that's breaking locally, even
5 the O&Os, even the O&Os, can pre-empt the network to
6 cover that story. If there's a major story and here's
7 a good example, here in Washington, D.C. When the
8 sniper story broke, stations went away from the
9 network. They went away from their syndicated
10 programming to cover that story because that's what
11 viewers in this area were concerned about.

12 So driven by the magnitude of the story,
13 or stated another way, and there's a very important
14 story that's breaking in a community, local
15 broadcasters do often go away from their network
16 programming to cover that because that's what viewers
17 want.

18 Q That's an excellent example with regard to
19 the sniper story. It was covered by not just one
20 station, but practically every station in the market?

21 A That's correct.

22 Q CNN?

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1 A Sure.

2 Q MSNBC?

3 A I believe so.

4 Q Probably CNBC?

5 A Probably.

6 Q You would find practically any website
7 with news content on the internet that was also
8 covering that?

9 A Correct.

10 Q And as a matter of fact, you could
11 probably receive some audiovisual via the internet?

12 A Probably, correct.

13 Q So in that particular case, there's really
14 no unique value to a local broadcaster carrying that
15 sort of because it's a well-carried story, is it not?

16 A In that particular case, that story became
17 a national story.

18 Q Right.

19 A If we went to one of the smaller markets
20 or another market where there was a major local story
21 that didn't transcend that national boundary and that
22 story is being covered by the local broadcasters, that

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1 then would not get the additional coverage that is
2 being referred to here.

3 JUDGE YOUNG: How often do you have a
4 story, you referenced the Ira Einhorn story which is
5 local, but may have a broader impact? How often does
6 that happen?

7 THE WITNESS: It depends on the markets,
8 but when I talk about the two that I've worked in, I'm
9 trying to remember the gentleman's name who -- it was
10 a high profile case. He was in Delaware. He was an
11 attorney.

12 JUDGE YOUNG: Murdering the secretary?

13 THE WITNESS: Yes, I'm trying to remember
14 his name now.

15 JUDGE YOUNG: Dupont?

16 THE WITNESS: I believe so. I'm sorry, I
17 can't think of his name. But --

18 JUDGE VON KANN: Those are two different
19 things. There was a wrestling coach or something --

20 THE WITNESS: That's different.

21 JUDGE VON KANN: And then there was an
22 attorney.

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1 THE WITNESS: Joseph Copano, right.

2 JUDGE VON KANN: Stay away from Delaware,
3 generally. It's a dangerous place.

4 JUDGE YOUNG: I think we are proving --

5 JUDGE VON KANN: It's a minuscule state,
6 but very dangerous.

7 (Laughter.)

8 JUDGE YOUNG: I think we're proving the
9 point that people do have some interest in blood and
10 guts.

11 (Laughter.)

12 THE WITNESS: To answer your question,
13 Judge Young, those are two cases that occurred in a
14 relatively narrow window of time, maybe within a year
15 or so of each other. I mean those types of stories
16 don't happen every day, but they do occur and when
17 they do occur, a responsible news organization,
18 locally responsible news organization covers it and
19 that is of interest to the region beyond the -- just
20 the city, the ADI.

21 BY MR. OLANIRAN:

22 Q I want to be clear about the Ira Einhorn

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1 story. The reference you make in your testimony it's
2 not to what happened in 1998 and 1999, you're really
3 talking about what's happening recently, I guess
4 within the last few months, within the last year or
5 so?

6 A Yes, Ira Einhorn was probably a year or so
7 ago.

8 Q And really back in 1998 and 1999, that was
9 a national story, was it not?

10 A I don't recall.

11 Q You recall that?

12 A I don't recall.

13 Q I don't have to move this in, but I would
14 like to use this to refresh his recollection and if
15 counsel wants to see it, it's find.

16 Would the panel like to see it.

17 JUDGE VON KANN: I think we probably
18 should mark it.

19 MR. OLANIRAN: I'll mark it as PS 14-X.

20 (Whereupon, the above-referred
21 to document was marked as PS
22 Exhibit 14 - X for

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identification.)

JUDGE GULIN: While counsel is doing that I just want to correct something I said earlier on. I think I suggested one of my questions to the witness if no money changed hands during retransmission consent that that perhaps indicated that the copyright operators were received locally generated programming for free. That, of course, is not true. I meant to suggest that it perhaps indicates that they were receiving it for nothing more or for very little more than what they would pay under a Section 111 compulsory license rates. I just wanted to make that clear.

I also understand that and this perhaps dovetails as one of the fundamental issues to me at least is in this hypothetical market that we are attempting to grapple with, one of the issues is who is the seller. Is it, in fact, the copyright owner or is the station acting as an intermediary and perhaps that has some relevance to this and I'm hoping parties will address or brief that issue.

Thank you.

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1 By MR. OLANIRAN:

2 Q Have you had a chance to look at the
3 exhibit, the document marked as PS Exhibit 14-X?

4 A Not finished yet.

5 Q Okay.

6 JUDGE VON KANN: Maybe when you brief it,
7 it could be thoughtfully, aggressively -- you don't
8 have to hurl things at each other. Just thoughtfully.

9 (Laughter.)

10 (Pause.)

11 THE WITNESS: Okay.

12 BY MR. OLANIRAN:

13 Q And that exhibit PS 14-X is an article
14 from CNN.com and the article is entitled "Fugitive Out
15 on Bail after France Agrees to Extradition."

16 You're familiar with CNN.com, right?

17 A Yes.

18 Q And it's a popular source of news
19 information?

20 A It's a source of news information.

21 Q Okay.

22 JUDGE VON KANN: Not popular to him.

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1 (Laughter.)

2 MR. OLANIRAN: Apparently. Your Honor, on
3 second thought, I would move the admission of Exhibit
4 PS 14-X for impeachment only.

5 JUDGE VON KANN: So received.

6 (The document, having been
7 marked previously for
8 identification as PS Exhibit
9 14-X, was received in
10 evidence.)

11 By MR. OLANIRAN:

12 Q Exhibit PS 14-X is dated, do you see the
13 date of February 18, 1999 about midway through that
14 front page?

15 A Yes.

16 Q And that article discusses various aspects
17 of the Ira Einhorn case, does it not?

18 A It does.

19 Q Would you agree that CNN whether CNN on
20 air or CNN.com tends to carry stories of national
21 interest?

22 A That is correct.

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1 Q And my question earlier was whether or not
2 you recall that the Ira Einhorn story was of national
3 interest in the 1998-1999 period. Now would you agree
4 with me after reviewing that article that it was a
5 national story at that time?

6 A Correct.

7 Q So that then --

8 A What I was going to say in my testimony,
9 page 3, I mentioned that the Ira Einhorn received some
10 national coverage .

11 In my view, there's a difference between
12 a national story like the war and the story that
13 receives some national coverage like Ira Einhorn. At
14 a certain point in time, the Ira Einhorn story fell
15 between the network and local which was the point I
16 made in my written testimony.

17 The war, on the other hand, continues to
18 be a national story because of its import to the
19 country. So I would make that distinction and maybe
20 we need a better definition of what is a national
21 story, one that receives some coverage is one way to
22 delineate national stories. When that has continual

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1 coverage or is long running, is more the national
2 story -- or I should say another way to delineate a
3 national story.

4 JUDGE VON KANN: I have noticed, I don't
5 know if this is a good example, but it's sort of a
6 tragic example, every time there is a school shooting,
7 wherever it is in the country, we all -- it's very hot
8 at the moment. And then it typically sort of drops
9 and we don't hear the follow up on the Nebraska
10 shooting or the one in Kansas or whatever. The local
11 people obviously are getting it all the time, but we
12 sort of see that blip, that little spike of that
13 because that's kind of a continuing theme that we're
14 dealing with in the country, but the follow up tends
15 to drop from the national seen, it seems to me.

16 THE WITNESS: That is precisely the point
17 I'm trying to make here, that certain stories get some
18 national coverage and then they do drop off and it's
19 up to the local station to pick it up at that point.

20 By MR. OLANIRAN:

21 Q Would you please turn to Exhibit 9? Now
22 let's look at the KYW listing. The last three shows

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1 on that list, Eye Witness Sports Game Day, Sunday
2 Sports Wrap, Enquirer High School Sports Show, do you
3 recall what time slots they aired in?

4 A Generally, I do. Eye Witness Sports Game
5 Day would precede the NFL coverage provided by CBS
6 which depending on the local game and when it aired,
7 could be 12 o'clock or 1 o'clock, so somewhere in the
8 -- I'll give you a broad parameter. Somewhere between
9 11 and 1, based on the CBS network schedule of games
10 is when Eyewitness Sports Game Day played or Game Day
11 ran.

12 Sunday Sports Wrap aired following our 11
13 o'clock news at 11:35. And the Enquirer High School
14 Sports Show, as I recall it, it was either Saturday
15 morning or Sunday morning in the 10 a.m. to noon rough
16 time period, to the best of my recollection.

17 Q With respect to the Eyewitness Sports Game
18 Day, for example, wouldn't that have had to compete
19 with the networks pre-game show also?

20 A As I remember our scheduling, I believe
21 had our game day show lead into the networks pregame
22 show, then to the game.

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1 Q Okay.

2 A That's my recollection of how we scheduled
3 that.

4 Q Would it have competed though with say
5 ESPN or ESPN2, pregame show?

6 A If ESPN2 had a game, sure.

7 Q And if you had a regional sports network
8 or if you had let's say a CN8, for example, in the
9 Philadelphia area, would they typically also have a
10 pre-game show that would compete with the pre-game
11 show on KYW?

12 A It would compete, but if I am in
13 Philadelphia and I'm a Philadelphia fan, I'm less
14 concerned about the national sports pre-game show than
15 I am with what does Andy Reid, the coach of the Eagles
16 going to do today for the game that I'm most
17 interested in. So yes, there's a competitor, but the
18 true local sports fans who we are interested in
19 serving are I believe better served by the local
20 product that we produce.

21 Q Did you say if you are a Philadelphia
22 Eagles fan?

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1 A I am. I'm converting or trying to convert
2 as we --

3 Q I have to warn you, this is dangerous
4 territory.

5 (Laughter.)

6 A I withdraw that statement then.

7 (Laughter.)

8 Q Now on the KYW list at the very last item
9 on that list is a high school sports show. Now I have
10 given you, I think it's PS 13-X.

11 And if you would go to the second page of
12 that exhibit. Do you see that?

13 A Yes.

14 Q And the second full paragraph. Would you
15 read that into the record please?

16 A Second full paragraph?

17 Q Yes.

18 A "'We believe the marketplace is local
19 rather than regional', says Bonner, Vice President of
20 News Service for Time Warner Cable and interim
21 President of the Association of Regional News
22 Channels."

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1 Q I think I was speaking of the second
2 paragraph, I'm sorry, the second full paragraph.

3 A Second full paragraph.

4 Q Yes.

5 A I'm sorry. "'There are times when I'm
6 looking for local information about when schools are
7 closed and what shelters are open,' he continues.
8 'It's like hyper local news. Here's coverage of the
9 high school sports that nobody sees. In Austin, high
10 school football is as big as it gets in Texas.
11 They'll also put the high school volleyball sports on
12 there. If you're a local broadcaster with 22 minutes
13 and a half or 44 minutes and an hour and you've got
14 all these stories to get in, that gets pretty
15 compressed.' "

16 Q Now I asked you again, would you consider
17 cable news networks to the extent that they cover high
18 school sports, also competitors with respect to the
19 high school sports that you carry?

20 A Certainly they are competitive.

21 Q Now you spoke of the regional appeal of
22 the Philadelphia Eagles on page 3 of your testimony?

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1 You were discussing the regional appeal of
2 sports teams, in general?

3 A Yes.

4 Q And Philadelphia has the Phillies and the
5 Flyers, I think. Is that right?

6 A That's correct.

7 Q And looking at the New York, New Jersey,
8 Pennsylvania area, I mean in New York alone, New York
9 has the Knicks, the Giants, the Jets, Yankees, Mets,
10 Rangers, I may have missed one or two. Now the Jets
11 and the Giants, they play in New Jersey, correct?

12 A That's correct.

13 Q And New Jersey has the Devils and the New
14 Jersey Nets? I'm not sure about those names.

15 A I think you're right.

16 Q Now with respect to again what the cable
17 news networks and again there are some regional sports
18 networks that are also covered in this, I mean isn't
19 coverage for all of the teams in those areas, isn't
20 that competing with the same coverage that you have in
21 your pre and post-game show?

22 A It's another option for viewers, yes.

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1 Q Now you spoke earlier, I guess about the
2 appeal of programming by broadcasters. You talked in
3 terms of the quality of the newcast, do you remember
4 that?

5 A Yes.

6 Q You talked in terms of the subject of the
7 newcast, do you remember that?

8 A Yes.

9 Q You also talk about perhaps sports,
10 remember that?

11 A Yes.

12 Q You mentioned in your testimony about the
13 widespread appeal of WJZ and KYW and in terms of their
14 regional appeal, what are you -- how are you measuring
15 the appeal?

16 A I use the context of the types of stories
17 that we cover, but again in this context more the
18 discretionary stories that we cover that would have
19 wide appeal. For example, as I mentioned earlier, if
20 there is a relevant health series, it doesn't matter
21 if you're in Lebanon or York or Philadelphia, that's
22 going to be important to you.

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1 We've done consumer stories where we've
2 profiled and this is a specific that happened in
3 Philadelphia. We profiled some of those discount food
4 stores that had a practice of marking out the
5 expiration dates on the food that they were selling.
6 These stores were not only located in the Philadelphia
7 area, but also in New Jersey and some of the outlying
8 areas.

9 For viewers to be made aware that when
10 they go in, they get a great price on the food, but if
11 the meat expired last month, it's probably not a good
12 thing to purchase. We uncovered that kind of story.
13 That story has interest beyond the ADI that we were
14 serving. And it's that kind of discretionary story
15 that I believe created value because we had the
16 investigative team, the resources to do an
17 investigative team that could uncover this type of
18 story whereas some of the outlying areas do not have
19 that as a resource.

20 That's just one example of the type of --
21 when I say discretionary story that we provided at
22 both WJZ and also KYW in Philadelphia.

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1 Q The question I have though is you put a
2 program together that you think has great quality,
3 great subject matter and you put it on the air. How
4 do you now that it has appealed to your subscribers?

5 A There are ratings that are available that
6 would show some, that would indicate at least some
7 level of interest in those segments in those shows.

8 Q So you do care whether or not people
9 watch?

10 A I didn't say I cared. I mean you put on
11 a product, you want as many people who can watch you
12 to watch you. I'm saying I can't translate those
13 viewers into dollars.

14 Q Well, how else would you measure whether
15 or not your program has widespread appeal?

16 A When you're in the news business and I
17 think the examples that I've used illustrate the types
18 of stories that would have widespread appeal, I don't
19 need to see necessarily a rating book that lets me
20 know that people in those outlying areas were
21 interested in that consumer finding that we made.

22 I don't need ratings or any other source

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1 to tell me that when we can give helpful tips that are
2 the result of doing some research and consulting with
3 others on how to get your child to read by 9 that
4 that's something that has appeal.

5 Instinctively, you know the types of
6 stores that will have that appeal and when I
7 considered the news product that was produced at WJZ
8 and KYW, those types of stories were evident in the
9 newscasts. So there is some indication that you can
10 get from what are the ratings and again, we were not
11 able to translate those ratings into dollars. There's
12 some indication that you can get anecdotally when
13 people write you, they e-mail you, we liked that
14 story. Do more of that.

15 But in the final analysis, absent those
16 things, news people, news producers know those stories
17 that will transcend just the local audience.

18 Q But again, there you're focusing on what
19 the producer of the program thinks. A widespread
20 appeal suggests to me that you're receiving input from
21 the audience that you're targeting.

22 Isn't it true that as GM, you wanted to

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1 know whether anyone was watching your show?

2 A I always knew somebody was watching my
3 show.

4 Q You wanted to know whether your show was
5 being watched and that was the facts, an objective way
6 of knowing whether or not a program was successful.

7 A It was. We also conducted focus groups on
8 a regular basis and this may be in answer to part of
9 your question, how did we get feedback?

10 We conducted focus groups to get that
11 direct feedback. We would play in those focus groups,
12 here's this type of story, is this something you're
13 interested in?

14 Here's this type of delivery, here's this
15 anchor team. Do these elements cause you to want to
16 watch?

17 What can we do more to cause you to want
18 to watch? We did those things routinely and routinely
19 the types of stories that I've described here showed
20 up as high interest to those viewers, those
21 respondents in the focus groups.

22 And as I said and I'll say it again, it

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1 doesn't matter whether you're in York or Philadelphia,
2 York, PA or Philadelphia. Those stories impact and
3 are of interest to many people in many people's lives.
4 That's why they're done. That's why they continue to
5 attract viewers, whether we see them showing up in
6 ratings and certainly whether we can translate them
7 into dollars or not.

8 JUDGE VON KANN: We probably need to take
9 a break here.

10 About how much longer do you think you --

11 MR. OLANIRAN: One last question.

12 JUDGE VON KANN: One last question?

13 MR. OLANIRAN: Yes.

14 JUDGE VON KANN: Then we'll hear that
15 question and then take a break.

16 BY MR. OLANIRAN:

17 Q You would accept, would you not, that the
18 primary objective criterion for measuring whether or
19 not what you think is quality and of great subject
20 matter has translated similarly to your audience is by
21 looking at the ratings? And I emphasize the word
22 primary objective criterion.

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1 A Yes.

2 Q Would you accept that?

3 A I would accept that.

4 Q Mr. Alexander, thank you very much.

5 A Thank you.

6 JUDGE VON KANN: We'll take 15 minutes.

7 Thank you.

8 (Whereupon, the proceedings went off the
9 record at 12:07 p.m. and went back on the record at
10 12:20 p.m.)

11 JUDGE VON KANN: Okay. Mr. Garrett.

12 BY MR. GARRETT:

13 Q Good afternoon, Mr. Alexander. I am Bob
14 Garrett, and I represent the Joint Sports Claimants in
15 this proceeding.

16 A Good afternoon.

17 Q Mr. Alexander, you talked about the switch
18 in affiliations for KYW. Do you recall that?

19 A Yes.

20 Q Now, when did that occur?

21 A I don't recall the year exactly. It was
22 probably '96, or somewhere in there. I am not sure.

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1 Q Is that fairly typical for a station to
2 switch affiliations?

3 A No, it is not.

4 Q You talked about a domino effect causing
5 this switch. Do you recall what triggered the domino
6 effect?

7 A Yes. The dominos began when Fox purchased
8 some stations that were previously, or had previously
9 had held other network affiliations. They changed
10 those stations to Fox, leaving -- and as I said, the
11 number of dominos when you consider the different
12 group owners and that kind of thing that was involved
13 in that.

14 Q Okay. Do you recall a number of stations
15 changing affiliations when CBS lost its rights to the
16 National Football League?

17 A I do not.

18 Q Okay. You spoke with Mr. Lopez about
19 different NFL games being or the same NFL game being
20 on two cable channels. Do you recall that?

21 A Yes.

22 Q The Fox affiliate in New York is WNYW,

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1 correct?

2 A That is correct.

3 Q And the Fox affiliate in Philadelphia
4 would have been WTFX is it?

5 A WTXF.

6 Q WTXF. Would they typically show the same
7 NFL game?

8 A I am not certain, but I don't believe that
9 they would. But I am not certain.

10 Q New York would typically show a Giant's
11 game and the one in Philadelphia would show an Eagle's
12 game, correct?

13 A When was that possible, of course.

14 Q Okay. And you had indicated a number of
15 the cable systems where WKYW was the carrier of the
16 distant signal. Do you recall that?

17 A Yes.

18 Q Is it possible that in some of those cable
19 systems that they might have carried both of those
20 signals, WTXF and WNYW?

21 A It is possible.

22 Q For example, you would have Bonneycut

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1 Light (phonetic) in New Jersey, which appears to carry
2 both, and that would not surprise you would it?

3 A No.

4 A And a cable operator who brought in those
5 or carried those two Fox stations, or imported WTXF as
6 a distant signal cable, brings something of clear
7 value to his cable subscribers wouldn't he?

8 A I think so, yes.

9 Q And what would be of clear value would be
10 the ability to see a game that would otherwise not be
11 available on local television, correct?

12 A That's correct.

13 Q And that probably would have occurred in
14 other areas, in the same area that KYW operated?

15 A Correct.

16 Q Now, what were -- KYW did not broadcast
17 any of the games of any of the local Philadelphia
18 teams in the '98 time frame there did it?

19 A There was a period of time, and I don't
20 recall the exact year, but KYW broadcast the Eagles'
21 pre-season games.

22 Q Okay.

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1 A And again I am not certain if it was in
2 these years or not, but there was a period of time
3 that that occurred.

4 Q Do you know who would have broadcast the
5 Philadelphia Phillies games?

6 A Then?

7 Q Yes.

8 A Probably WPSG would be my guess.

9 Q '99 or '98, WBHL, correct?

10 A I don't recall. I'm sorry.

11 Q What about the Flyers? Do you recall?

12 A I don't recall.

13 Q And the 76ers?

14 A I don't recall exactly, no.

15 Q If I take a look at your Exhibit -- well,
16 it is not your exhibit. It is Dr. DeFranco's Exhibit
17 13 that you were discussing with Mr. Stewart. Do you
18 have that before you?

19 A Yes.

20 Q You identify a number of the cable
21 communities there where KYW was carried as a distant
22 signal, correct?

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1 A That's correct.

2 Q And you talked about the interest in
3 sports programs that you produced in that area,
4 correct?

5 A That's correct.

6 Q And I take it that you would agree that
7 there would be significant fan interest in the Flyers
8 and the '76ers, Phillies, in that same general area?

9 A Yes.

10 Q All right. And that would be a geographic
11 area in which other Philadelphia stations, including
12 those that broadcast the games of those teams, would
13 be carried as a distant signal, correct?

14 A That's correct.

15 Q Now, in the 1990-1992 proceeding -- and
16 Dr. Ducey had testified that he had put in a map
17 similar to Exhibit 13 that showed the cable systems
18 that carried KYW in the 1990-1992 period. Were you
19 aware of that?

20 A No, I was not.

21 Q And if you compare that exhibit with this
22 Exhibit 13, it appears that there are a number of

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1 cable systems that actually dropped KYW during that
2 period between '92 and 1998-1999. Were you aware of
3 that?

4 A No, I was not.

5 Q Okay. Were you aware of why any of the
6 cable systems in that period were dropped by KYW?

7 A In '92

8 Q In the period between '92 and '98 to '99?

9 A It could have been the affiliation switch
10 if they had two NBCs, or two CBSs. I am not sure, but
11 that could have been a reason.

12 Q Okay. I guess at least in those cases the
13 special attractiveness of the news programs that you
14 described in KYW would not have been sufficient to
15 continue the carriage in those systems?

16 A That is possible.

17 Q Okay. Mr. Alexander, what are some of the
18 other broadcast signals that are licensed to
19 Philadelphia?

20 A The other stations?

21 Q Yes.

22 A WPVI, the Disney-owned station; WCAU, the

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1 NBC-owned station; WUPN, the Viacom-owned station;
2 WBFG, and that is an independent, and an independent
3 owner as well, and independently programmed, and an
4 independent owner. You mentioned WTXF, the Fox-owned
5 station. I think those are the primary ones.

6 Q How would you compare the news on KYW to
7 that on WPHL?

8 A PHL?

9 Q Yes.

10 A It is WB. First, I would compare the
11 quantity, and I believe PHL has an hour or a half-an-
12 hour of news nightly. They don't have news during the
13 day. It is a WB station.

14 Then you would look at the quality and the
15 quality based on resources to cover the market, and I
16 would say that the advantage is to KYW in that
17 comparison.

18 I would compare further perception, news
19 perception in the marketplace, and again advantage
20 KYW. Credibility, another place or another
21 characteristic that obviously drives viewers, and
22 again advantage KYW. Those are some of the

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1 comparisons that I would make when you ask that
2 question.

3 Q It looks like you win.

4 A I would definitely win.

5 Q I would not have expected to hear you say
6 anything else.

7 JUDGE YOUNG: And is the other station a
8 member of the NAB?

9 THE WITNESS: You know, I am not sure.
10 Not any longer. Let me check that when I get back.

11 BY MR. GARRETT:

12 Q We will keep this a closed session for
13 you. Just looking at some data that is commonly
14 available to all of us from Cable Data Corporation,
15 indicates that in '98 that there were 38 cable
16 systems, with about 770,000 subscribers who received
17 WPHL as a distant signal, and 11 that received KYW, a
18 total of 133,000 subscribers, a pretty significant
19 disparity between the two, would you agree?

20 A Right.

21 Q Does that surprise you that a station with
22 obviously inferior newscasts might actually reach a

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1 much broader distant signal subscriber base?

2 A Well, clearly as I now reflect on that
3 station, they also carry -- carry or carried many of
4 the sports franchises. So that would have driven that
5 I would suspect.

6 JUDGE VON KANN: If you want Mr. Garrett
7 to let you go early, you need to say something nice
8 about the Cubs pretty soon.

9 MR. GARRETT: I am not even going to go
10 there.

11 THE WITNESS: Sammy Sosa. Sammy Sosa.

12 BY MR. GARRETT:

13 Q I also looked at another database that is
14 commonly available to all of us, and this was one that
15 was prepared by NAB witness Dr. Fratrik, and it shows
16 the different programming that was on KYW and WJZ
17 during these years, and if appeared to me just doing
18 a kind of quick look through that approximately 10 or
19 11 hours a day on KYW were occupied by non-network
20 programs. Does that number sound about right?

21 A Ten hours a day?

22 Q Well, 10 to 11, 12 maybe.

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1 A That number seems high.

2 Q That seems high to you?

3 A Yes.

4 Q But how many hours a day of network
5 programming are no KYW?

6 A Let me walk through the day parts. You
7 have the network morning news, CBS morning news, and
8 that is 2 hours. You have the soap block, which is --

9 JUDGE VON KANN: Interminable.

10 THE WITNESS: Interminable. If I were
11 going to quantify that, it would be --

12 (Laughter.)

13 THE WITNESS: I think it is about 2 or
14 2-1/2 hours, I believe.

15 JUDGE VON KANN: Oh, it has got to be
16 longer than that.

17 BY MR. GARRETT:

18 Q It is a good thing they are not
19 compensable.

20 A Right. And then you have the network
21 evening news half-an-hour, and the 8-to-11 o'clock
22 prime block, followed by late night, an hour-and-a-

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1 half, Letterman plus later. That is the typical
2 network schedule for the week.

3 So the balance of the hours are filled
4 with local news, and with some locally produced shows,
5 specials, and syndicated product.

6 Q Okay. That appears to be about what 9-1/2
7 hours of network programming on a typical day; is that
8 about right?

9 A That sounds about right.

10 Q And then you have some on the weekends,
11 and perhaps more on the weekends?

12 A Actually, on the weekends, it is -- the
13 weekend morning news from the network, and Saturday is
14 a little different from Sunday with a CBS affiliate,
15 because you have CBS Sunday Morning on Sunday, but you
16 don't have that on Saturday.

17 And you have Face the Nation, and then the
18 afternoon, when there are no network sports, that's
19 all syndicated programming or local programming. And
20 then again the prime block from the network. Late
21 night on the weekends is locally programmed.

22 Q Is it fair to say then that about half of

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1 your programming would be non-network, and about half
2 would be network?

3 A That is probably a fair assessment.

4 Q Would that be typical of most network
5 affiliates around the country?

6 A I would think so, yes.

7 Q Okay. So about half of the programming
8 that is actually on a network affiliate would be
9 compensable for purposes of these proceedings as you
10 understand it?

11 A Yes. The exception of that would be again
12 during football season, and during sports, whether it
13 is the Masters, and those types of activities would
14 raise the network contribution to the day. March
15 Madness, those are some of the things that would add
16 to the schedule.

17 Q And at the same time lower the amount of
18 compensable programming found on network affiliates;
19 is that correct?

20 A Correct.

21 Q You also talked about a cable system that
22 tried to drop WJZ. Do you recall that?

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1 A Yes, I do.

2 Q And they got a bunch of complaints, and
3 you got a bunch of complaints, correct?

4 A That's correct.

5 Q And what did the subscribers complain
6 about?

7 A They complained that WJZ was dropped from
8 the cable system.

9 Q And they wanted it back?

10 A That's correct.

11 Q And the fact that WJZ carried the Orioles
12 influence them in any way?

13 A It possibly could have.

14 Q And WJZ has pretty much the same carriage
15 today as it did back in 1990-1992, distant signal
16 carriage?

17 A I believe that is correct.

18 Q I look at the Exhibit 13 that we were
19 discussing a few moments ago, Mr. Alexander, and I see
20 in those red dots the various communities where KYW
21 was received a distant signal, at least in 1999. Is
22 it possible that KYW was received off the air in any

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1 of those communities?

2 A That is possible. As I sit here now, I
3 don't know how far out our over-the-air signal went
4 that there is a possibility that on a good night with
5 all the environmental factors wind up, we could have
6 been picked up over the air in Wilkes-Barre.

7 Q Would it generally be the case that you
8 could receive your signal within your Grade B contour?

9 A Yes.

10 Q And if I wanted to see what your grade B
11 contour looked like, where might I go?

12 A You would go to the yellow.

13 Q The yellow reflects the Grade B contour,
14 or does it reflect the ADI?

15 A It does reflect the ADI, and I am not sure
16 if this map has the Grade B. I am not sure of that.

17 Q Are you familiar with the Television Cable
18 Fat Book?

19 A Yes.

20 Q And you are aware that they publish the
21 Grade B contours for various stations there?

22 A Yes.

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1 Q Are those Grade B contours relatively
2 accurate?

3 A Yes.

4 Q Let me just hand you a page, and I don't
5 think I need to mark it as an exhibit, but just a page
6 with KYW's Grade B contour. Do you see that?

7 A Yes, I do.

8 Q Is it fair to say that it looks like the
9 Grade B contour extends out about to 70 miles, is that
10 about right, 60 to 70 miles? I think there is a scale
11 there.

12 JUDGE VON KANN: While you are studying
13 that, here is a package for you.

14 (Brief Pause.)

15 THE WITNESS: That appears to be correct
16 from just eyeballing this, that's correct.

17 BY MR. GARRETT:

18 Q So if you can compare that Grade B contour
19 to the information that you have on Exhibit 13, would
20 it be fair to say that some of these cable communities
21 would be encompassed by the Grade B contour?

22 A That would appear to be the case.

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1 Q Okay. And in fact KYW would be a local
2 signal in several of these communities, cable
3 communities, as well as a distant signal, correct?

4 A Could I go back to your previous
5 assertion?

6 Q Sure.

7 A I am looking on the sheet that you just
8 handed me for Wilkes Barre-Scranton, just as an
9 example of one of the communities on Exhibit 13.
10 Maybe it is my eyes, but I am not seeing it yet.

11 Q I think maybe the problem is that the T.V.
12 and Cable Fact Book doesn't usually gives the cities.
13 It gives counties.

14 A Well, I don't know where Wilkes Barre is.
15 Well, just based on the scale, it would appear that
16 that is the Grade B area that you have indicated here.

17 Q It is a fact is it not that KYW would be
18 considered a local signal within many of these
19 portions of the communities identified here on Exhibit
20 13?

21 A Outside of the ADI?

22 Q Yes, even outside the ADI.

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1 A Based on the fact book map, that appears
2 to be correct.

3 Q Okay. I think -- and again looking at the
4 commonly available data to us, it appeared that on
5 only four of these cable systems was KYW a fully
6 distant signal, and partially distant everywhere else.
7 Does that sound about right to you?

8 A I don't know.

9 Q At least in those cases where it was
10 partially, it would actually have must carry rights,
11 correct?

12 A Correct.

13 JUDGE VON KANN: Can you explain what --
14 and maybe everybody else in the room knows, but the
15 Grade B concept. Is this a wider area where the
16 signal does not come in quite as strong, but you can
17 still get it or something? What does that mean?

18 THE WITNESS: The Grade A contour is that
19 contour that is closest in to the city and has the
20 strongest signal. The Grade B is further out, a
21 little bit less signal obviously.

22 JUDGE VON KANN: Does it go past that? Do

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1 we C's, and D's, and E's, or is it just A and B?

2 THE WITNESS: A and B, I believe.

3 JUDGE VON KANN: And on Exhibit 13, within
4 the yellow area we have a circle, a dotted circle,
5 which is within the ADI as I understand it.

6 THE WITNESS: That is correct.

7 JUDGE VON KANN: And that is apparently 35
8 miles. Is that a radius of 35 miles from the
9 emanating power or something? Is that the idea?

10 THE WITNESS: That is my understanding,
11 correct.

12 JUDGE VON KANN: And is that the A
13 contour?

14 THE WITNESS: That would be my assessment.
15 I am not as familiar with Mr. DeFranco's methodology
16 there.

17 JUDGE VON KANN: We can reserve that until
18 he comes. That's fine.

19 BY MR. GARRETT:

20 Q The broadcasters though generally have
21 taken the position have they not that individuals can
22 receive a signal within the Grade B contour?

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1 A Correct.

2 Q And in fact that was a major issue in some
3 litigation that the broadcasters brought against DBS
4 services, like EchoStar, and PrimeTime 24, correct?

5 A That's correct.

6 Q And the position of the broadcasters was
7 that DBS services like EchoStar should not be allowed
8 to bring in an out-of-market network affiliate, the
9 same affiliation into a sister affiliate's Grade B
10 contour, correct?

11 A That's correct.

12 Q But you say that you basically sell
13 advertising on an ADI basis, and not on a Grade B
14 basis; is that right?

15 A Not on a distant signal basis.

16 Q Okay. You talked about how these
17 additional communities here would be value added,
18 correct?

19 A Yes, that's correct.

20 Q When your advertising salesmen go out and
21 try to convince potential advertisers to sign up, is
22 that how they describe it, that this is a value added

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1 to you?

2 A When it is used, and there are a number of
3 agencies and advertisers who are very specific. They
4 say our target area is the ADI. They are not
5 interested, and depending on their level of
6 disinterest, smart sales people don't try to push
7 something on them that they don't want.

8 And certainly -- I should say certainly
9 won't pay for. When there is a buyer who might be
10 persuaded that this has some value, it would either be
11 as bonus weight, bonus audience, or as I described
12 earlier, value added. They are one and the same.

13 But it is an audience that the advertiser
14 would get without incurring any incremental cost to
15 get it.

16 Q Would it be fair to say that at least in
17 some instances that this bonus coverage might convince
18 an advertiser to purchase spot time that it might not
19 otherwise purchase?

20 A It would be an exception rather than the
21 rule that that persuaded someone.

22 Q Okay. But your salesmen will use that as

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1 a selling tool, at least in some cases?

2 A They attempt to use it as a selling tool,
3 correct.

4 Q And broadcasters have attempted to protect
5 their entire Grade B contour area from outside
6 competition, correct?

7 A That's correct.

8 MR. GARRETT: I think I have no further
9 questions. Thank you very much, Mr. Alexander.

10 THE WITNESS: Thank you.

11 JUDGE VON KANN: Okay.

12 JUDGE YOUNG: I have got one. When you
13 were answering the questions that Mr. Olaniran had
14 about competition from other local news providers, are
15 there ratings that will show what level of viewership
16 you got over various periods of time?

17 THE WITNESS: Yes, generally, and I say
18 generally. If the number of viewers don't reach a
19 certain threshold according to the Nielson Rating
20 Services, it will record none, and you will see a
21 hash-mark in the ratings book.

22 It doesn't necessarily mean that no one

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1 Q Okay. Just as an aside, I do remember you
2 from your days at WJZ because I lived in Baltimore for
3 a while.

4 A Hopefully I left a good impression.

5 Q I think you did.

6 JUDGE GULIN: Did you do editorials?

7 THE WITNESS: Yes, I did.

8 JUDGE GULIN: I recall.

9 BY MR. OLANIRAN:

10 Q In the course of your responsibilities at
11 WJZ and KYW, you were responsible for acquisition of
12 non-network programming, were you not?

13 A That is correct.

14 Q And the non-network programming that you
15 acquired included syndicated series and movies, did
16 they not?

17 A That's correct.

18 Q When you mentioned in your testimony that
19 you negotiated program contracts, am I to infer from
20 that that you negotiated directly with or supervised
21 negotiations with sellers of syndicated series and
22 movies?

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1 A That is correct.

2 Q And in terms of the types of syndicated
3 programs that you acquired, did they include talk
4 shows?

5 A Yes, they did.

6 Q Do you recall any specific ones?

7 A The Gayle King Show, Bertice Berry.
8 There's a host of shows that are no longer,
9 unfortunately or fortunately depending on your
10 perspective, on the air, but there were a host of
11 shows. Those are two that come to mind.

12 Q Those shows, they may not be here now, but
13 they were the ones that you acquired during that
14 period?

15 A That's correct.

16 Q Do you recall acquiring sitcoms?

17 A Yes.

18 Q Such as?

19 A Such as Roseanne.

20 Q A very popular one, I guess, at that time?

21 A At that time, yeah, at that time. The
22 Cosby Show.

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1 Q Another popular one.

2 A Right.

3 JUDGE YOUNG: What time period are we
4 talking about now?

5 MR. OLANIRAN: '98 and '99.

6 JUDGE YOUNG: So you were at KYW?

7 THE WITNESS: I was at -- yeah, I was at
8 WJZ for the bulk of the year. It was December --
9 November of '98 that I went to KYW.

10 MR. OLANIRAN: And I actually wasn't
11 limiting his acquisition to just in general to the
12 types -- I'm inquiring to the types of programs that
13 he acquired at both stations.

14 JUDGE YOUNG: But in '98 and '99?

15 MR. OLANIRAN: But in the period of
16 '98-'99, correct.

17 BY MR. OLANIRAN:

18 Q And do you remember acquiring any hour
19 dramas?

20 A I don't recall hour dramas.

21 Q Magazine shows?

22 A Yes.

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1 Q Such as?

2 A Entertainment Tonight. That's really the
3 only one that I recall at this point.

4 Q That's fair enough. I'm sure there are
5 probably many others too numerous to mention.

6 JUDGE YOUNG: That is not evidence.

7 (Laughter.)

8 BY MR. OLANIRAN:

9 Q With regard to all of the non-network
10 programming that your station aired, you also were
11 responsible as general manager for scheduling, were
12 you not?

13 A That is correct.

14 Q Okay. And by that, your responsibility
15 entailed what to schedule and what time slot and when
16 to put it on?

17 A That's correct.

18 Q When you negotiated with sellers of
19 syndicated programming, what factors did you consider
20 in determining the price that you were willing to pay
21 for a syndicated program?

22 A We would typically do a projection. We

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1 would guesstimate what the ratings for a particular
2 show would generate and factor against that a cost per
3 thousand, a cost per point, rating point, in the
4 market and come up with a number that would make that
5 show profitable.

6 And that number when you back into it
7 would be the ideal price. That number or less, I
8 should say, would be the ideal price for that
9 particular program.

10 Q Just from the couple of things you said,
11 I take it that audience size would be a factor?

12 A Anticipated audience size.

13 Q Projected audience size.

14 A Correct.

15 Q And in the case of a syndicated program,
16 such as Roseanne, and you could probably infer from
17 its performance on network that in off-network market,
18 it would probably generate perhaps not the same
19 numbers as it did on network, but it would probably be
20 a popular syndicated program, correct?

21 A That was the general thought. I'll add
22 one other one with the specific of Roseanne.

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1 Roseanne, as you may recall, was a bit controversial.

2 Q Yes.

3 A And the way that this works, Judges, is
4 that you are often asked to make a commitment on a
5 program two years before you can actually air it. So
6 you make a purchase this year, but you're not allowed
7 to air it until two years from now.

8 So when you have controversial talent who
9 are involved in it, she may be very popular now on the
10 network, but all she has to do is -- and I'll use an
11 exact -- mess up the national anthem someplace, and
12 her popularity then could drop.

13 We've still made the commitment for the
14 show and we still are committed and contractually
15 obligated to run that show, but it would be
16 potentially, potentially less ratings by the time it
17 actually aired than when we negotiated it, just to
18 give you a sense of how it worked.

19 JUDGE YOUNG: Let me ask a question which
20 may be obvious to everybody but me. When you're
21 talking about sitcoms, you're buying reruns?

22 THE WITNESS: That's correct. That's

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1 correct.

2 JUDGE VON KANN: Let me make sure I've got
3 it. You have to commit two years before the season in
4 which you are going to show these shows?

5 THE WITNESS: In some situations, that is
6 correct.

7 JUDGE VON KANN: In some situations.

8 THE WITNESS: Right. And that situation,
9 Judge, is driven often by how popular a show is. If
10 I have a very popular show right now that is running
11 on the network, the best strategy for me as a
12 syndicator is to try to get that show sold while it's
13 hot, even though it's going to be on the air two years
14 later, because they get the commitment now while it's
15 hot and we hope that it is still is as viable by the
16 time it comes to air.

17 JUDGE VON KANN: This is only with respect
18 to syndicated shows, this two-year advance business?

19 THE WITNESS: And it is not all syndicated
20 shows, but when you say "sitcoms," that was typically
21 how sitcoms worked. There are other programs that
22 don't have that much lead time, but in the case of

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1 sitcoms, there was often a long lead time.

2 JUDGE VON KANN: This requirement is not
3 a matter of law, I guess. It's the way the
4 syndicators work. Is that it? If you want Roseanne
5 two years from now, come see us now because we're
6 closing it out? You know, I don't know, whatever it
7 is, end of the month.

8 THE WITNESS: That's correct.

9 JUDGE VON KANN: And if you don't get it
10 then and let's say there's some show that wasn't very
11 popular now, but as the two-year period, the
12 popularity starts to go up so that 12 months before,
13 it's really hot. Can you knock on their door and say,
14 "We really want it. And we know we didn't sign up for
15 it back then, but we would like it now"?

16 THE WITNESS: That assumes that there was
17 no other interest in the market and the show is still
18 available. Oftentimes on a show like Roseanne, there
19 is a lot of interest from the stations. And somebody
20 will typically buy a show like that.

21 In the event that they don't, the show,
22 they will either almost give it away, if you will, to

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1 a lesser station in the market or they will take it
2 off the market. And then your scenario could come to
3 play that the show on the network is growing in
4 ratings and popularity. Now we've had a second
5 thought about it. We now knock on the door.

6 Of course, from a buyer's standpoint,
7 that's not the best position to be in, but that
8 situation can and does occur.

9 JUDGE VON KANN: Okay.

10 BY MR. OLANIRAN:

11 Q Also, in terms of the factors that you
12 considered in determining the price you're willing to
13 pay, does demographics come into play also?

14 A Sure.

15 Q In what fashion?

16 A During this period of time, the most
17 requested demographic was adults 25 to 54 years of
18 age. That demographic changes over time with
19 marketing objectives that various advertisers have,
20 but back in these -- this time that we are talking
21 about, adults 25 to 54 was the most requested
22 demographic by advertisers.

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1 So to the extent that a syndicated program
2 had that appeal, it would factor in how we would value
3 that program.

4 Q Within the 25 to 54 demographic, is it
5 fair to say, though, that the 18 to 49 demo was
6 actually of more interest to advertisers in that
7 period?

8 JUDGE VON KANN: Eighteen to what?

9 MR. OLANIRAN: Eighteen to 49.

10 THE WITNESS: Well, when we got requests
11 for avails, or availabilities, as it's termed in our
12 business, the advertiser would say, "Twenty-five to 54
13 is who we are after."

14 We're not sure what other motives or what
15 subsections of that were important, but they asked us
16 to submit pricing on 25 to 54-year-old adults. So I'm
17 not sure if the 18 to 49 portion of that was more
18 important to them or not.

19 BY MR. OLANIRAN:

20 Q In your experience outside of the
21 negotiations with advertisers, then, do you know
22 whether adults 18 to 49 are the most sought after

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1 demographics by advertisers?

2 A Well, if you fast forward to today, that
3 is the popular demographic. But during the time that
4 we are talking about here, it was 25 to 54.

5 Q Okay. Now, did day parts also have
6 something to do with the price you were willing to
7 pay? And how did that influence the price?

8 A It's driven by audience size and audience
9 availability. If the day part that we are talking
10 about is morning, there are fewer people available
11 watching television during the morning hours than
12 there would be at, say, 7:00 o'clock p.m.

13 So a show that we plan to put at 7:00
14 o'clock would generate more audience, therefore,
15 higher revenue potential. Therefore, we were able to
16 pay more for that type of show that was going to be in
17 that time period.

18 Q So it was a question of we know we're
19 going to get this size audience at this time and this
20 is the type of show that we want to put on?

21 A Correct.

22 Q Okay. In terms of the day part that you

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1 scheduled particular programs, did it also matter to
2 you what your competitors were doing?

3 A Absolutely. Counter-programming is a key
4 part of the success equation of a television station.
5 If your competitor was on the air with a talk show,
6 unless you had a very -- a much stronger talk show,
7 you would want to counter with something different.

8 And, again, the conversation and
9 discussions would be around, "Well, this is different,
10 but is this different product appealing to those folks
11 who are available at that time?"

12 So you went through that discussion and
13 that process to come up with a counter-programming
14 schedule that would ideally draw more viewers to your
15 station, of course, than the competitors.

16 Q And your competitors at WJZ would have
17 been WBAL. Is that right?

18 A That's correct.

19 Q And --

20 A WMAR.

21 Q WMAR. Thank you. And I suppose the other
22 stations counter-programmed against your station, too?

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1 Those other stations did?

2 A Yes.

3 Q You are also responsible as GM for sales
4 of advertisements, were you not, advertisement spots?
5 I'm sorry.

6 A That's correct.

7 Q And by sales of advertisement, we're
8 talking about ad spots that are within each
9 programming that's on air at your stations?

10 A That's correct.

11 Q Did you sell any national ad avails?

12 A Yes, our station did have national sales,
13 correct.

14 Q And I assume you also sold locals?

15 A Correct.

16 Q What percentage of your station's revenue
17 at KYW came from local ad avails?

18 A During these years, to the best of my
19 recollection, it was about 55 percent local, 45
20 percent national.

21 Q And at WJZ, if you can remember, what was
22 the percentage split there?

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1 A That was actually what I thought you had
2 asked about.

3 Q Oh, I'm sorry. I thought I said KYW
4 first, but --

5 A You may have. I'm sorry.

6 Q So the numbers you gave me were for WJZ?

7 A Correct.

8 Q That's the 55 local, 45 national split.
9 Now let's turn to KYW.

10 A KYW in those years. Actually, hang on one
11 second. Let me just -- KYW. Let me start with that.
12 KYW was about 55 percent local, 45 percent national.

13 WJZ was actually the exact opposite of
14 that.

15 Q Okay. So --

16 A That's my recollection.

17 Q So WJZ there would have been 45 percent
18 local and 55 percent national?

19 A Correct.

20 Q When you negotiated with the buyers of ad
21 spots, what factors did you consider in determining
22 the price you were willing to accept from an ad spot

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1 buyer?

2 A Two primary factors. One were the ratings
3 generated by a particular program. The second was the
4 demand on the inventory for those particular programs.

5 If an inventory is tight, it's a supply
6 and demand sort of business. If inventory is tight,
7 that would push the rates up. If the inventory was
8 wide open and you had lots, you would price -- you
9 would tend to price --

10 JUDGE YOUNG: You are talking about
11 available slots?

12 THE WITNESS: Yes. I am sorry. Available
13 inventory, available slots. Correct. The higher the
14 demand, the price was pushed up. The lower the
15 demand, it would go down.

16 BY MR. OLANIRAN:

17 Q And the demand on inventory, is that
18 somehow tied into the popularity of the day part?

19 A In part.

20 Q In part perhaps also anticipated audience
21 size?

22 A Correct.

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1 Q Which I guess is somehow very well
2 connected, I suppose?

3 A Right.

4 Q As GM, were you also responsible for
5 audience promotion?

6 A Yes.

7 Q And what kind of activities did you engage
8 in at KYW for audience promotion purposes?

9 A We would prioritize our programming
10 lineup, decide what the priorities for promotion were.
11 We would tend to begin with news being the most
12 highest priority in terms of promotion followed by the
13 access time period, which is 7:00 to 8:00 p.m.,
14 followed by morning, which is 9:00 a.m. to noon.

15 Once that priority was set, we would
16 determine how much promotional weight we would want to
17 assess each of those. And the promotional weight was
18 not only in terms of our on-air promotion, the promos
19 that you would see on KYW for, you know, "Tune in
20 tonight at 11:00 because," but also the outside media,
21 the ratio we would buy, newspaper that we would
22 purchase to promote ourselves, but that was the

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1 process by which we would identify a promotion for the
2 various on-air programs.

3 JUDGE YOUNG: You don't focus on 8:00 p.m.
4 to 11:00 p.m. because that is primarily network?

5 THE WITNESS: That is primarily -- that is
6 network.

7 JUDGE YOUNG: Network.

8 THE WITNESS: And typically the networks
9 promote their fare on their own. We would often
10 supplement it, but that was generally promoted by the
11 network itself.

12 BY MR. OLANIRAN:

13 Q Is it fair to say, is it accurate to say
14 there the objective of audience promotion is exactly
15 that, to develop more viewers?

16 A Absolutely. And also a secondary
17 objective would be to, again, help brand the
18 television station with whatever the product is. And,
19 again, typically we were interested in getting viewers
20 to our newscast but also branding that newscast so
21 that when people tuned in, they knew what to expect.

22 The saying that we used to have is "We

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1 want to be like a comfortable pair of slippers. When
2 you turn on WJZ, you know what you're going to get.
3 You're going to get familiar talent. You know the
4 kind of news we are going to cover. And you're
5 comfortable with it." And that was the dual objective
6 of marketing for that particular station.

7 Q And promoting audience levels to relate to
8 audience levels generally as well as the targeting of
9 audience level for specific demographics, correct?

10 A Would you repeat that?

11 Q In other words, when you go by your
12 audience promotion, you could focus on audience levels
13 in general or you could focus on specific
14 demographics?

15 A I see. Yes. We could target a specific
16 demographic to watch a particular show. I understand
17 the question now. Yes, that's correct.

18 Q And, again, that's because in general as
19 well as with regard to specific demographics, the
20 higher audience levels are related directly to
21 revenues, are they not?

22 A That's correct. If I could add one

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1 additional piece there?

2 Q Sure.

3 A Not in every situation is the higher
4 audience level going to translate into higher revenue.
5 There are some programs that are very popular, but
6 advertisers don't want to take -- don't want to buy
7 time in them. Some controversial programming would be
8 in that category.

9 Q Would you say that is more of an exception
10 than the rule?

11 A It would be more of an exception, right.

12 Q Thank you.

13 Now, did you know while you were at KYW in
14 Philadelphia that it was carried as a distant signal?

15 A Yes.

16 Q How did you know that?

17 A I think -- it's hard to remember exactly
18 how I knew that. I think it was just a market
19 knowledge that certain distant signals -- certain
20 cable systems were carrying it in a distant fashion.

21 I don't remember a specific "This is what
22 is going on there," but it was knowledge that I picked

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1 up someplace. I'm not sure where.

2 Q What was the major cable system in that
3 ADI that carried KYW?

4 A Comcast.

5 Q Comcast. Did you know while you were at
6 WJZ in Baltimore that WJZ was carried as a distant
7 signal?

8 A Yes.

9 Q How did you know that?

10 A Again, I don't recall a specific in terms
11 of that knowledge, but I do recall without the
12 specific cable system someone took WJZ off their cable
13 system in an outlying area. And their phone lines
14 were flooded, as were ours, from viewers in that area
15 wondering why did they take us off. And, again, I
16 don't remember the specific cable system, but the net
17 result of that was WJZ was reinstated into that
18 system.

19 JUDGE YOUNG: Maybe I have had a wrong
20 impression. I would have assumed because in selling
21 advertising you would tell the advertiser or the
22 agency, whoever, that selling advertising of available

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1 slots, that "We're being carried by six different
2 cable systems" and your audience reaches X numbers of
3 people, as opposed to just our local reach --

4 THE WITNESS: I think that is a common
5 misperception, Judge. When advertisers are planning
6 their buys, they look at an ADI. And that is the
7 market that they're buying. That is the market that
8 they are targeting.

9 They're not interested in paying extra at
10 WJZ in Baltimore for these outlying areas because
11 those outlying areas are going to be bought in -- if
12 we're talking about a national advertiser, they're
13 going to be bought in that outlying market separate
14 from WJZ's Baltimore market.

15 So there isn't an advantage in pricing to
16 having that extra audience out there. I'd state it
17 this way. The viewers who watched us on distant
18 signal benefitted by watching our programming much
19 more than we benefitted having them watch it.

20 JUDGE YOUNG: Well, that's very
21 interesting. So you're saying put aside the
22 superstations for a second.

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1 THE WITNESS: Right.

2 JUDGE YOUNG: From the perspective of an
3 independent or a network affiliate, you're
4 indifferent, say, whether you're picked up as a
5 distant signal?

6 THE WITNESS: As a general manager, you
7 always want to be seen wherever you can be seen.
8 Okay? There's nothing wrong with that. In fact, it's
9 a good thing. But in terms of benefitting from it
10 from a sales standpoint, there isn't that benefit.

11 The best case scenario would be one of our
12 salespersons going out and saying, "We're going to --
13 here's the price for the Baltimore market." And as a
14 value added -- you're not paying for it, but as a
15 value added, we can also deliver these out here."

16 And the buyers are sophisticated enough to
17 extrapolate the audience and know that they're not
18 being charged for that outlying area. They're only
19 paying for the Baltimore market.

20 JUDGE YOUNG: So from that perspective,
21 you're indifferent. Maybe from a reputational
22 perspective, it's good to be picked up as a distant

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1 signal?

2 THE WITNESS: Sure.

3 JUDGE YOUNG: Does it affect -- I don't
4 know how this works vis-a-vis network affiliates, but
5 -- well, I don't know how it works vis-a-vis owned and
6 operated, but as a network affiliate or as an
7 independent who may be sold someday, does it increase
8 your value if you're picked up by a distant signal?

9 THE WITNESS: Not typically. Again, when
10 a station is sold, it's a cash flow analysis that's
11 the basis for --

12 JUDGE YOUNG: A multiple of cash flow?

13 THE WITNESS: A multiple of cash flow,
14 correct. And if you're not getting any extra revenue,
15 which is the case, from those outlying areas, then
16 it's not going to factor into the price.

17 JUDGE GULIN: Just to be clear, of course,
18 the copyright owners are not indifferent?

19 THE WITNESS: Correct.

20 JUDGE GULIN: You're talking about the
21 station?

22 THE WITNESS: Right.

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1 JUDGE GULIN: So as a copyright owner
2 yourself to your own programming, you're not
3 indifferent in that sense. You want to be compensated
4 for that, I assume?

5 THE WITNESS: That's correct.

6 JUDGE GULIN: Okay. Thank you for that
7 clarification.

8 MR. OLANIRAN: I have a handful of
9 questions along this line and then I don't know if we
10 want to go ahead or whether we're going to take a
11 break.

12 JUDGE VON KANN: I think we are probably
13 due for a break. Why don't we take 15 minutes.

14 (Whereupon, the foregoing matter went off
15 the record at 10:35 a.m. and went back on
16 the record at 10:51 a.m.)

17 JUDGE VON KANN: Okay.

18 JUDGE GULIN: I did want to follow up with
19 a couple more questions, if I could, Mr. Alexander,
20 about this idea of -- I think you said that really the
21 -- when JZ is carried as a distant signal, the benefit
22 is really to the subscribers and not to JZ?

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1 THE WITNESS: Correct.

2 JUDGE GULIN: And we had a conversation,
3 you had a colloquy with counsel about whether you were
4 aware, how you became aware that it was -- JZ was
5 being carried as a distant signal.

6 I guess as an O&O station, retransmission
7 consent negotiations would have occurred with CBS and
8 you would have been aware of that.

9 THE WITNESS: Correct. I was aware of it
10 and had some input in it, but the actual negotiations
11 were going on or handled on our behalf by corporate
12 offices.

13 JUDGE GULIN: And can you give us some
14 idea of what those negotiations produced in terms of
15 retransmission consent? Did payment change hands?

16 THE WITNESS: As I recall, there's not a
17 payment. There was no payment that happened during
18 these years. It was carriage, basically, that was
19 achieved, not much more than that, to my recollection.

20 JUDGE GULIN: What do you mean by that?
21 In other words, the agreement is simply, okay, you can
22 go ahead and carry it?

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1 THE WITNESS: There may have been some
2 other pieces. There might have been some promotional
3 aspects on the cable system or that type of thing, but
4 --

5 JUDGE GULIN: No cash changed hands?

6 THE WITNESS: No cash, to my knowledge, no
7 cash.

8 JUDGE GULIN: Now what, if anything, in
9 your opinion does that say about the value of the
10 station produced programming which is essentially
11 being given away for free under that scenario? I
12 understand retransmission consent is really not a
13 negotiation for copyright, but isn't the net effect
14 the same, that the cable operator gets to transmit to
15 their subscribers your programming and they pay
16 nothing for it?

17 THE WITNESS: And with all due respect to
18 my corporate, former corporate bosses, I would have
19 loved to have been more involved integrally in that
20 negotiation because I agree with your assessment that
21 there is value that may not have been realized in what
22 was achieved in terms of a settlement.

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1 JUDGE GULIN: Okay, thank you.

2 BY MR. OLANIRAN:

3 Q Just a quick follow-up on that. Are you
4 saying that the broadcasters did not get any value
5 from the must carry retransmission? Is that what
6 you're saying?

7 A That's my recollection, correct.

8 Q But they did not get any value --

9 A No cash.

10 Q No cash. But they did get some value from
11 that, right? In terms of guaranteed coverage in a
12 sense?

13 A Well, yes.

14 Q Carriage, I'm sorry.

15 A Carriage, yes. Carriage is important and
16 that certainly was achieved, but in terms of a cash
17 value which is what the Judge was asking about, there
18 was not that to my knowledge.

19 JUDGE GULIN: I don't get that. I'm
20 sorry, I thought you said earlier you were indifferent
21 to carriage as a distant signal.

22 THE WITNESS: Indifferent to carriage as

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1 it relates to the business proposition of running a
2 station.

3 JUDGE YOUNG: Right.

4 THE WITNESS: In other words, I cannot
5 translate that carriage and the audience in the
6 distant signal into revenue. As I mentioned to you
7 earlier, however, as a general manager, I want to be
8 seen wherever I can be seen.

9 There may be people who live in Lebanon,
10 York, who are going to be moving to Baltimore. I want
11 them to already familiar with my station. So not
12 totally indifferent to carriage, but indifferent as it
13 relates to the business proposition that we have at
14 the station.

15 JUDGE YOUNG: Okay.

16 JUDGE VON KANN: Does that last answer
17 mean that carriage in your view has sort of indirect
18 or long term or sort of somewhat more general value,
19 but it doesn't translate directly into a dollar for
20 dollar hit on your bottom line, something like that?

21 THE WITNESS: That's correct.

22 JUDGE VON KANN: Sort of like good will

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1 and general increased visibility or credibility or
2 something?

3 THE WITNESS: That's correct.

4 JUDGE YOUNG: Okay.

5 THE WITNESS: That's exactly it.

6 BY MR. OLANIRAN:

7 Q And just to summarize the discussion
8 that's been going on, the fact that if stations were
9 being carried as distant signal did not really play a
10 part into how you operated your stations on a day to
11 day basis, is that correct?

12 A That's correct. Our focus was on the ADI.
13 That was our customer base, our viewer base. That's
14 what we wanted to serve, look to serve.

15 Q You mentioned the term O&O earlier. What
16 does that mean?

17 A O&O means owned and operated. It's
18 another way of saying that our station was owned by
19 one of the major networks. That's a term typically
20 applied to network owned and operated stations.

21 Q So KYW and WJZ O&Os?

22 A Yes.

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1 Q And for WJZ, that's to be distinguished
2 from the Os which refers to the baseball team?

3 A That's correct.

4 Q Are you familiar with the practice of
5 sharing of program segments with O&Os?

6 A I'm not sure I understand the question,
7 sharing of program --

8 Q Program segments.

9 A Can you give me an example?

10 Q Where you would share content, I suppose.

11 A If I understand your question right, there
12 are shows like Evening Magazine. Are you familiar
13 with that? I don't know if I can answer your
14 question, but let me --

15 JUDGE YOUNG: I'm not familiar with that.

16 THE WITNESS: Let me get a little more
17 clarification on the question.

18 BY MR. OLANIRAN:

19 Q I guess my question is whether or not you
20 sometimes share content with other O&Os?

21 A The answer to that --

22 Q In terms of local, still confining that to

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1 the local program -- station produced programming?

2 A Yes, I understand better now the question.
3 We do share news with our sister stations. For
4 example, using an example I used earlier, if we send
5 a reporter and a photographer to Afghanistan and there
6 a pieces that we can generate for one of our sister
7 stations and feed them back so that they can use that,
8 we of course, do that.

9 Another example of sharing is with a show,
10 a program like Evening Magazine. It was a syndicated
11 show, although not 100 percent of the country was
12 covered or not a large percentage like that. But it
13 was a show that each of the subscribing stations
14 contributed segments that were put on what was put on
15 a national reel. All of the participating stations
16 got this national reel and as they put their local
17 show together, they would select stories from it, add
18 with their local talent what we called ins and outs,
19 intros and outros and make that show feel local, but
20 it had pieces from other markets which made it a more
21 efficient way to program that station. And again,
22 evening magazine which was on WJZ for a number of

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1 years is probably a terrific example, one of the best
2 examples I can come up with of that type of sharing.

3 It was a local feeling show, if you will,
4 with pieces that originated in other markets.

5 JUDGE YOUNG: When you refer to "sister"
6 are you referring to other CBS O&Os or are you talking
7 about CBS affiliates.

8 THE WITNESS: In the case of news, it's
9 typically other CBS O&Os. In the case of Evening
10 Magazine, it was wherever those --

11 JUDGE YOUNG: Whoever subscribed?

12 THE WITNESS: Whoever subscribed, correct.
13 A sharing could also extend to a non -- and I'm
14 speaking of news this time, could also extend to a
15 non-O&O, but another CBS affiliate. There's often
16 that kind of sharing that goes on, especially in news.

17 BY MR. OLANIRAN:

18 Q Just to make sure I understand what you're
19 saying right, in looking at news, a half hour news
20 program, for example, you could have incorporated
21 within that half hour news program content that has
22 been aired by other sister stations, so that while the

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1 entire program is produced by say KYW, you could have
2 within that a certain portion of it that was actually
3 done also by WBJZ, I'm sorry, WJZ?

4 A That's correct. And to be clear, in a
5 news cast, especially, that would a very small
6 percentage. It wasn't done locally.

7 Q Do you have any idea what percentage that
8 would be?

9 A It would be maybe one story every week or
10 two weeks. That's an exception that would be used in
11 a local newscast. And it would be driven by the
12 stories and their impact in the home market, whatever
13 that home market was.

14 Q Did you use any national or regional news
15 service to obtain news segments?

16 A Yes.

17 Q And talk about that a little bit and how
18 that works, worked, rather.

19 A In the past days we subscribed to CNN. We
20 also subscribed to I think it was called at that time
21 CBS News Path. There have been several services that
22 provide national feeds, national stories that we could

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1 then tap into to make, to shape our newscasts.

2 Q And CONUS maybe?

3 A We were not a CONUS subscriber. They were
4 available in the market. We did not subscribe to
5 CONUS.

6 Q Can you quantify for me at KYW what
7 percentage that would be typically of a newscast that
8 would be from some sort of news service?

9 A It would be again a minuscule percentage,
10 generally. If there was a big story that was
11 happening in say Florida and we weren't able to get
12 the kind of footage that we wanted from our sister
13 station in Florida. We would use some of the national
14 footage from CNN to tell that story. But it was a
15 very small percentage typically of what the newscast
16 --

17 Q That's two minuscule percentages thus far?

18 A That's correct. That's correct.

19 Q Did your newscasts also contain feeds from
20 network news?

21 A It could and again driven by the news of
22 the day, if there was a national story that our

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1 network had covered and we wanted to use clips of that
2 or pieces of that in our local newscasts we have the
3 ability to do that.

4 Q And again, I'm going to have to ask you to
5 help me, to what extent did you do that?

6 A A small percentage.

7 Q Three small percentages.

8 A Three small.

9 JUDGE YOUNG: Does that reflect most of
10 the news you're going to carry is going to be local?

11 THE WITNESS: That's correct. The five
12 judges that if a network news is going to follow which
13 typically it does, the local broadcast, they're going
14 to do, they're going to cover that story in an in-
15 depth way perhaps. What people are looking for what
16 we are targeting was more of the local and as I said,
17 the discretionary stories that would be of interest to
18 that market as well.

19 JUDGE YOUNG: Would you cover news -- you
20 sort of describe before where you have a map in
21 Exhibits 13 and 14, the coverage outside of affiliate
22 ADI, for example, looking at 13. Coverage outside of

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1 the affiliate ADI and cable stations outside of the
2 affiliate ADI, would you have news stories from Wilkes
3 Barre, Scranton or from some of these other more
4 extended distant areas?

5 THE WITNESS: It's possible, but again,
6 not often. It would have to be a story that would
7 impact the people in the yellow area.

8 JUDGE YOUNG: The people within your own -
9 -

10 THE WITNESS: Correct. That was our
11 focus. That continues to be the focus. So to the
12 extent that Wilkes Barre, Scranton might have a story
13 that impacts the city and the ADI, we could use that.
14 But again, that's not typically going to happen. Not
15 typically.

16 BY MR. OLANIRAN:

17 Q For a network affiliate, news is usually
18 what percentage of the total broadcast day?

19 A I can't express it in a percentage. I can
20 tell you what the typical news holes are and you can
21 kind of do the match.

22 Typically the morning news, this is Monday

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1 through Friday is 5 a.m. to 7 a.m. Typically, there's
2 a half hour at noon. Again, typically 5 p.m., hour,
3 followed by a 6 o'clock half hour of local news and
4 then 11 o'clock half hour newscast. That is the
5 typical Monday through Friday local news component.

6 There are stations and again, if we're
7 talking about the years here, that would be very close
8 to what reality was.

9 Q So it looks like approximately four and a
10 half hours a day?

11 A Right.

12 Q You said that the percentage of content
13 that you get from regional news or that you share with
14 sister stations or from networks are minuscule
15 percentages, but news itself doesn't appear to be a
16 huge segment of the broadcast day, but this thing can
17 add up, can't they?

18 A I'm sorry?

19 Q The percentages do add up, don't they?

20 A If you look at the week and we look at the
21 week's worth of broadcasts and again ask the question
22 on a typical week how much of that news is made up of

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1 something from a news service, how much of that news
2 made up from network feeds, how much of that news is
3 made up from other sources other than local. On the
4 week, that's going to be a small percentage because
5 the bulk of the time, the bulk of the focus is on
6 issues that impact the ADI and those issues, more
7 often than not, are coming from the local station and
8 their enterprise reporting, their discretionary use of
9 stories as they make up the news casts and of course,
10 the news of the day, but it is by and large that focus
11 that drives it and it is again, by and large, coming
12 from the local station.

13 Q Would you please turn to Exhibit 9? NAB
14 Exhibit 9, I'm sorry. Are you there?

15 A Yes.

16 Q Now this exhibit is a list of the station
17 produced programs at WJZ and at KYW.

18 A Uh-huh.

19 Q Is it your testimony that these programs
20 are representative of locally produced programs by
21 network affiliates in general?

22 A Yes.

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1 Q And would these programs be representative
2 of the network affiliates that are carried as distant
3 signals?

4 A Generally speaking, yes. Let me ask some
5 clarification. We are talking about 1998, not 2003.

6 Q Yes.

7 A So in 1998, yes, this would be, in my
8 view, representative of what stations we're doing in
9 terms of news and programming commitment.

10 Q Now did you do a study to establish that
11 or?

12 A That's from my experience of having
13 exposure to our group of stations as well as having
14 contacts in other markets, other general managers.
15 This, I'm comfortable saying, represents, generally,
16 there are some exceptions to that, of course, but
17 generally represents what was being done in 1998-1999.

18 Q Now Exhibit 9, I think about 8 of the 11
19 programs that are listed I believe for WJZ are news
20 programs. And when -- do you see that?

21 A Yes.

22 Q Now when you characterize a news program

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1 as innovative and diverse, what are you saying there?
2 What do you mean by that?

3 A Well, for a newscast to generate an
4 audience, and that is certainly the key reason that
5 you produce those, they have to differentiate
6 themselves in some way from what everybody else is
7 going.

8 If you are not innovative, if you are not
9 creative, if you are not diverse, you will not get the
10 corresponding audience that responds to that kind of
11 programming. So within the news arena, there is a
12 need for those characteristics when you're putting
13 together a newscast and at WJZ specifically, it was a
14 dominant number one newscast that had a long history
15 of success so that combination of things was obviously
16 delivered over time at that station.

17 Q If you look at the listing for WJZ, did
18 the first show, the Gannett, 5:30 a.m.?

19 A At this point, I believe, that's when it
20 started, correct.

21 Q And then the second show on the list then
22 would begin at 6?

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1 A That's my recollection, correct.

2 Q So you have a 5:30 half hour news program,
3 followed by another one at 6 a.m. or was that a one
4 hour news program at 5?

5 A That was an hour and a half basically of
6 local news. They were just titled differently. We
7 called the first half hour, Rise and Shine. And the
8 second hour, Hour News Morning Edition.

9 Q Now to what extent is there a difference
10 in content between the first hour and -- the first
11 half hour and the second hour?

12 A We had, as we again put together these
13 newscasts, we used research to show us what the
14 viewers were doing at a particular point in time.
15 From 5:30 to 6 there were a lot of folks who were
16 getting their children ready for school, getting ready
17 for work and during those -- that half hour, we would
18 focus on audibly informing them whether traffic,
19 things they need to do to get out the door, because
20 that's what we believe, based on our data, they were
21 interested in at that point. And I say audibly
22 because we all know that in the morning, you're not

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1 sitting there watching the set. You're all over the
2 house. You're getting things done.

3 The second hour of the newscast, you're
4 assuming now many people are out the door. There's a
5 different sort of approach you take at that point to
6 what you want to deliver. You always cover the news
7 of the day. Some of the discretionary stories would
8 change based on the audience that we thought was out
9 there at that time. So those are some of the things
10 that we would work on that were different from one
11 hour to the next hour and so forth.

12 Q Is it fair to say though that the
13 substance of the news from the first half hour to the
14 second hour does not change much?

15 A I would say that certainly some of it is
16 repeated, but the moment that you get into just
17 replaying the first half hour back for the second
18 hour, there are going to be people who are looking for
19 something different, so the product has to be
20 repackaged. You have to add new elements. It can't
21 be just the same product replayed for the second hour.

22 Q And sometimes you repeat portions of

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1 newscasts from the previous day?

2 A Sure. Sure. If there was a story the
3 night before that was big, there's an update this
4 morning, you play that and show what happened. But
5 typically, you would try to recut or re-edit the
6 package so that a viewer who watched you last night at
7 11, doesn't see the exact same thing the next morning.
8 They see a recut version of it, some new information
9 added. Those are key things in terms of keeping the
10 audience with you as opposed to have them wander off
11 to some other place.

12 Q Can you quantify what percentage of the
13 newscast would be repeated between the first -- in the
14 first full hour of news?

15 A It really is driven by the news of the
16 day. If it's a slow day, you'd have a higher
17 percentage repeated. If it's a news day where there's
18 news breaking or you've got live things going on, it
19 would change dramatically. So it really is driven by
20 the news and what's going on.

21 Q What do you understand as the task of this
22 panel?

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1 A My understanding is the panel has to
2 allocate royalty fees to the various people assembled
3 here.

4 Q Okay.

5 A The groups assembled here.

6 Q And let's assume that the primary
7 criterion and again, the primary criterion for the
8 allocation of royalties is that each program category
9 has to demonstrate the market value of its
10 programming. Are you with me?

11 A I'm with you.

12 Q Okay. Would you agree then based on that
13 assumption that each claimant category would have to
14 demonstrate its market value?

15 A Sure.

16 Q Now, a substantial portion of what NAB's
17 claiming in this proceeding, if you know, again, would
18 be news, wouldn't it? If you don't know --

19 A I'm not sure.

20 Q Okay. But you do speak in your testimony,
21 both oral and written, about the general appeal of
22 news programming that news contact on both KYW and WJZ

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1 and you have indicated it's the general representative
2 of the distant signal stations?

3 A Correct.

4 Q And historically, that appeal has been
5 because the new broadcasters have been a major source
6 of the -- the primary source of news?

7 A I would suggest that they continue to be
8 a primary source of local news.

9 Q Now are you aware of the other categories
10 of local programming that NAB is claiming to be part
11 of its claim in this case such as public affairs?

12 A No.

13 Q And you discuss some in your testimony,
14 high school sports, coaches, etcetera, etcetera. Is
15 it your testimony that -- strike that.

16 What is your view in terms of what has
17 happened to the non-news category of local programming
18 that's at stake in this proceeding?

19 What is your impression of what has
20 happened to that category since -- between 1992 and
21 1998?

22 A The non-news programming --

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1 Q Let me clarify the question a little bit.
2 What is your impression of the appeal of the non-news
3 category of NAB's claim in terms of what has happened
4 between what happened between 1992 and 1998?

5 A I think to the extent that that category
6 continues to be relevant to the audience that we're
7 targeting, there's not been a change.

8 That category of non-news locally produced
9 programming, when relevant, the key word, relevant,
10 has not changed over time.

11 Q Would you say that that appeal has stayed
12 the same?

13 A I would actually say that in some cases it
14 has actually improved. The local relevance amidst all
15 of the other sources continues to be important and may
16 have even elevated a bit over time.

17 Q In terms of news and non-news content,
18 would you say that there has been compensation --
19 there was compensation between 1992 and 1998?

20 A For?

21 Q Content that's delivered by local news,
22 station produced programs.

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1 A Are you asking if there is other local
2 news competition for that or other non-produced --
3 non-news produced --

4 Q I'm talking in terms of other sources of
5 the type of programming that's put on by stations?

6 A I'm sorry. I'm not following the
7 question.

8 Q Are you competing with -- in 1998, between
9 1992 and 1998, would you say that broadcasters were
10 competing with other delivery systems or other
11 suppliers of the type of contents that was being
12 produced by broadcasters such as news?

13 A I think I understand the question, has the
14 news competition increased over the years, is that the
15 essence?

16 Q Yes. And I'm not talking broadcast, it's
17 a broadcast competition. I'm talking about
18 competition from other delivery mechanisms.

19 A Yes, that competition has increased.

20 Q And would you say that perhaps that
21 competition has impacted the level of not so much has
22 diluted the interest that subscribers have in getting

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1 local programming from the broadcasters?

2 A No. I think that when it comes to local
3 news, all of the competitors who have come on the
4 scene since 1992, using your benchmark, have not to a
5 great extent impacted the local news delivery. They
6 may have and certainly impacted the national news or
7 the network news, but when it comes to local news,
8 people still get that, by and large, from the local
9 broadcaster.

10 MR. OLANIRAN: I'd like to have this
11 exhibit marked as Exhibit PS-X.

12 (Whereupon, the above-referred
13 to document was marked as PS
14 Exhibit 13 - X for
15 identification.)_

16 BY MR. OLANIRAN:

17 Q Mr. Alexander, I'm going to give you a few
18 moments to review that article and then I'll try to
19 focus you on a couple of paragraphs.

20 (Pause.)

21 Q Have you had a chance to review that?

22 A Generally, yes.

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1 Q Are you familiar with Broadcasting in
2 Cable?

3 A Yes, I am.

4 Q And it's a publication that has a fairly
5 large circulation within your industry, does it not?

6 A That's correct.

7 Q And the article that's entitled "Cable
8 News Nets Go Small" and you'll notice at the bottom of
9 Exhibit PS 13-X it indicates that it's a Broadcasting
10 and Cable from September 27 of 1999. Do you see that?

11 A Yes, I do.

12 Q I'd like to move for admission of PS 13-X
13 for impeachment.

14 MR. STEWART: No objection.

15 JUDGE VON KANN: So received.

16 (The document, having been
17 marked previously for
18 identification as PS Exhibit
19 13-X was received in evidence.)

20 BY MR. OLANIRAN:

21 Q Now in the first paragraph of that
22 article, it talks about cable news networks, does it

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1 syndicated concept because the same format, if you
2 will, played in different marketplaces.

3 BY MR. STEWART:

4 Q But the programs themselves were different
5 programs?

6 A That's correct.

7 Q Okay.

8 A That's correct.

9 JUDGE VON KANN: And I guess, therefore,
10 the question is, does this end up in your column or
11 Mr. Olaniran's column?

12 MR. STEWART: That is a question.

13 MR. OLANIRAN: We'll take it.

14 (Laughter.)

15 MR. STEWART: But we want it.

16 BY MR. STEWART:

17 Q And, Mr. Alexander, you were not using the
18 term "syndicated" as it has been developed as a
19 category in these royalty distribution proceedings,
20 were you?

21 A No. In fact, as a matter of fact, I
22 should probably clarify. Instead of using the word

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1 "syndication," I would say that it was a formatted
2 tool that was played in multiple markets, similar
3 format, multiple markets.

4 JUDGE VON KANN: Almost like sort of a
5 franchise or a licensee deal or something. Here is
6 our formula. If you want to buy into it, you could --
7 do you have to pay them, somebody, a certain amount --

8 THE WITNESS: Yes.

9 JUDGE VON KANN: -- of money to get that
10 deal and Mac and the sets and the questions and all of
11 that?

12 THE WITNESS: Correct.

13 JUDGE VON KANN: Okay.

14 BY MR. STEWART:

15 Q Now, one thing I notice about the first
16 and second pages of exhibit 9 is that the news
17 programs are, by and large, named Eyewitness News.
18 Why is that; on both stations, that is?

19 A Right. Eyewitness News is how we chose to
20 brand our broadcasts. And the term actually came from
21 a long time ago, when cameras on the scene were
22 actually a novelty. And the thought was, how do you

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1 communicate what you are doing with your news when
2 there are cameras at the scene of the accident or at
3 the scene of the news? And the term "eyewitness" was
4 coined at that point because you were able to bring
5 the viewer to the scene through the magic of
6 television cameras.

7 It seems like it's a long time ago that
8 that occurred. That's a branding evolved at the
9 stations that I was involved with to reflect -- we
10 wanted to show the news through the eyes of the people
11 affected by it, hence Eyewitness News.

12 That became how we shaped and crafted our
13 news product. Rather than talking about the
14 legislation specifically, perhaps we would show the
15 people who were going to be impacted by it and get
16 their views on it.

17 And that is how we chose how to brand and
18 differentiate our news product from the others in --

19 JUDGE VON KANN: It is a CBS brand, isn't
20 it, Eyewitness? No?

21 THE WITNESS: No. It is beyond CBS.
22 There are a number of stations in all affiliations

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1 that use "Eyewitness News."

2 JUDGE VON KANN: Okay.

3 BY MR. STEWART:

4 Q But, again, it is not the same, the
5 identical newscast in Philadelphia and Baltimore?

6 A It is not. Correct.

7 Q Now, turning to exhibit 14, which is,
8 again, attached to DeFranco's testimony, what is your
9 understanding of what this map shows?

10 A This map shows, again, the ADI in yellow.
11 It's Baltimore. It's ADI rank number 22. And the red
12 dots outside of it indicate the cable system that
13 served the outlying markets.

14 Q Now, you say in your testimony that cable
15 subscribers in Maryland would be interested, would
16 value this programming, local programming, from WJZ,
17 no matter how far away in the state they are. Why do
18 you say that?

19 A Well, Baltimore being the largest city in
20 the state, there were issues that impacted that city
21 that had regional as well as statewide implications.
22 So as we covered those stories, there was interest

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1 outside of the city itself.

2 Q The station there is carried in
3 Washington, D.C., which is a bigger market than
4 Baltimore. Why do you think that would be?

5 A The Baltimore-Washington region -- or in
6 the Baltimore-Washington region, there are people who
7 commute back and forth. There are counties in between
8 the two. Howard County is a for instance where there
9 are some people who work in Washington, some people
10 who work in Baltimore.

11 One of the things that we know is that
12 people tend to watch, tend to watch the news in the
13 station or in the market in which they work. They
14 tend to watch or want to know what is going on in that
15 particular market.

16 So to the extent that there are people
17 going back and forth, that would be a reason that
18 Washington viewers would be interested in a Baltimore
19 station like WJZ.

20 JUDGE VON KANN: Is it likely the kind of
21 -- on my cable system here, I get some Baltimore
22 channels. I am presuming some of the people who have

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1 cable in Baltimore get some Washington channels, that
2 there is sort of a cross-pollenization. Is that
3 right?

4 THE WITNESS: Some of the counties, that
5 is correct. Howard County would probably, Judge, be
6 the best example of that, where if you live in Howard
7 County -- I should say when I was at the station, then
8 you got the full complement of stations from both
9 Baltimore and Washington on your cable system. As you
10 got into the city, I am not sure that there are
11 Washington stations carried in the City of Baltimore
12 or certainly not all of them.

13 JUDGE VON KANN: They are a little more
14 parochial up there.

15 BY MR. STEWART:

16 Q Washington has its own CBS affiliate. Is
17 that right?

18 A That is correct.

19 Q And WJZ was a CBS affiliate?

20 A That's correct.

21 Q What would be different about WJZ from the
22 Washington CBS affiliate?

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1 A The primary difference would be the news
2 difference in the news focus. Again, our objective
3 was to serve the ADI and do that as best we could.
4 And with that good coverage as well as using
5 discretionary stories, that package becomes attractive
6 to outside of the Baltimore city or Baltimore ADI
7 area. That was our objective there.

8 Q Now, does WJZ also carry sports
9 programming?

10 A Yes.

11 Q Did it in 1998?

12 A Yes, it did.

13 Q How does that affect the value of the
14 station as a distant signal in your view?

15 A The Baltimore Orioles or, as they like to
16 be referred to, the Orioles were the -- we were the
17 station that carried that -- many of the games there,
18 as was the case with the Baltimore Ravens.

19 When you can carry those games, that's one
20 thing that makes the signal even more valuable, but
21 when you add to that pre and post-game shows and
22 specials, that for the sports fans in the region, it

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1 creates another value and another reason to watch a
2 station like that.

3 JUDGE YOUNG: Let me challenge you on that
4 for a second. Is it a reasonable thing to say that,
5 in fact, the reason why a cable system in D.C. might
6 carry that station is because it wants to make sure
7 its viewers see the Orioles and the Ravens and that
8 the news is truly secondary?

9 THE WITNESS: Clearly sports would be a
10 reason. I'm not sure I would rank it that way. There
11 are some people who are sports fans who would
12 absolutely agree with you, Judge, that the reason I
13 tune in is to watch the Baltimore Orioles or the
14 Ravens.

15 There are others in Washington who work in
16 Baltimore who want to know what is going on from a
17 news perspective in the city that they work. So they
18 may have a little different perspective on that.

19 But clearly sports would be one reason
20 that a cable system would want to carry and want to
21 ensure that those games are played in that particular
22 market, yes.

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1 JUDGE YOUNG: What's the basis for your
2 assertion that people who work in one area are
3 interested in the news in that area, as opposed to
4 where they might live?

5 THE WITNESS: There was research available
6 to us back then that suggested that.

7 JUDGE YOUNG: "Back then" meaning '98-'99?

8 THE WITNESS: Correct, correct.

9 JUDGE YOUNG: Research done by you all at
10 your station or research done on a more national --

11 THE WITNESS: More done on our station, at
12 our station.

13 JUDGE YOUNG: And to just push one step
14 further and to be somewhat cynical, my own view, at
15 least, experientially over time of local news is that
16 it's a lot of blood and guts, it's a lot of the crime
17 stories and accidents.

18 First of all, is that still true because
19 it may not be true? And if it's true, why would I be
20 interested in that if I am working in Baltimore?

21 THE WITNESS: Well, I think the most
22 successful stations don't have that as the focus. One

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1 of the things over the course of time is that you
2 realize that that's not what the viewers want. They
3 want to understand what is going on that is going to
4 impact their lives.

5 And if there's a horrendous crime that
6 occurs, you have to cover it because it actually
7 happened and it might cause someone to say, "You know,
8 I have to be a little more careful when I go to the
9 parking lot tonight."

10 But when that becomes the focus, -- and I
11 don't believe that it is the focus in most stations --
12 I don't think that's the formula for success. I think
13 the formula for success is we are as a medium and as
14 a news organization like a giant mirror.

15 When we are doing our jobs, we are
16 reflecting what is going on in the communities. And
17 there is some crime that happens, but there are a
18 whole lot of other good things. And there are a lot
19 of issues that people are interested in that also have
20 to be reflected in that mirror.

21 And I think the better stations understand
22 that. And more of them today have moved away from the

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1 blood and guts into more of that accurate reflection,
2 if you will.

3 JUDGE GULIN: Let me follow up a little
4 bit with respect to why JZ would be carried in
5 Washington. I understand your point that many people
6 who work in Washington might want to see Washington
7 news and vice versa.

8 Wouldn't you guess that a lot more people
9 from Baltimore commute to D.C. to work than people who
10 live in D.C. commute to Baltimore to work?

11 THE WITNESS: I guess I would think that
12 you are probably correct.

13 JUDGE GULIN: But, yet, JZ is carried in
14 D.C. And I think you were correct when you said I
15 don't think any Washington stations are carried in
16 Baltimore or Baltimore County. Wouldn't that tend to
17 suggest that maybe it is the sports that they are
18 really tuning into in D.C.?

19 THE WITNESS: Well, as I said, clearly
20 sports is a draw. There's no question about that.
21 But if I am able to watch a newscast on WJZ and hear
22 something in the discretionary category that I

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1 described earlier that is going to help me get my
2 child to college or help me with a health issue that
3 I have, that may be another reason to watch.

4 But I agree with your assessment. Sports
5 is a key reason that --

6 JUDGE GULIN: Are there any other
7 Baltimore stations besides JZ that are carried in
8 D.C.?

9 THE WITNESS: I am not certain, but I
10 believe there might be at least one other. I am not
11 certain of that, though.

12 JUDGE GULIN: Okay.

13 JUDGE YOUNG: I'm sorry. One last
14 question.

15 THE WITNESS: Shoot.

16 JUDGE YOUNG: In terms of these sports
17 talk shows on TV, have there been any studies or
18 surveys about the relative popularity of those shows
19 vis-a-vis the, one, cable sports shows and, number
20 two, sports radio?

21 THE WITNESS: Let me try to compare the
22 first two that you mentioned, local sports shows

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1 versus cable sports shows. If I am in a city where my
2 team, my home team, is going to the playoffs, I know
3 that that sports show locally is going to have players
4 interviewed, the coach, some intensive -- extensive
5 coverage, rather, of my favorite team.

6 If I tune in to one of the sports
7 channels, I will get a little bit on my favorite team,
8 but I have got to wade through all the rest of it. I
9 think it just depends on your -- you know, on your
10 preferential -- your tastes. But I think that the
11 true local sports fan would value that local sports
12 show if it's produced well and if it has, you know,
13 the right players and all that involved in it more
14 than the cable situation.

15 The radio comparison, again, when you say
16 a "radio talk show," there is a big range of them.

17 JUDGE YOUNG: Well, I don't know obviously
18 around the country, but at least in my home area, we
19 have got at least two now or maybe three all sports
20 all the time, interviews, you know, people phone in,
21 and I have a sense that lots and lots of people listen
22 to it, particularly if they're driving somewhere.

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1 THE WITNESS: Right, right. They are very
2 popular. And, again, it depends on the personality,
3 oftentimes the personality that is hosting or driving
4 the show, the guests that they get; the success,
5 relative success, or failure of the team. All of
6 those are factors that contribute to the success or
7 failure, if you will, of those types of shows.

8 JUDGE YOUNG: Do you have a sense that
9 over the last number of years, say, last five, six
10 years, the viewing of your local TV sports shows has
11 gone down as the popularity of sports radio has gone
12 up?

13 THE WITNESS: I don't have a sense of
14 that. I don't. I think that the ratings generally
15 ride sort of like fans or, I should say, some fans,
16 the fairweather fans. When the team is winning, the
17 ratings are up, people are very interested.

18 When the teams are not winning, you could
19 have it on radio, TV, cable. It doesn't matter.
20 They're not going to be tuning in that much if you
21 have a losing effort, generally speaking.

22 MR. STEWART: No further questions on

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1 direct.

2 JUDGE VON KANN: Okay. Do we have an
3 order of cross here?

4 JUDGE YOUNG: I have a question. I meant
5 to ask you this earlier. You gave us two examples of
6 the two stations that, actually, you were general
7 manager of or affiliated with. Do you have any
8 knowledge as to whether the sort of types of programs
9 that you listed here for those stations are reflective
10 of generally the broadcast station that might be
11 carried as a distant signal?

12 THE WITNESS: I would say that generally
13 this would be fairly representative. It's heavy on
14 news. It has sports programming when they have access
15 to the team or access to the games, if you will, and
16 there is public affairs programming that is involved
17 in that. So I would say yes, that is generally
18 reflective of stations across the country.

19 JUDGE YOUNG: Because as I read the list
20 with the exception of It's Academic, most of it was
21 news. There was a little magazine format and a little
22 sports, but most of it was news.

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1 THE WITNESS: Right.

2 JUDGE YOUNG: So that's a correct
3 generalization?

4 THE WITNESS: I would say so, yes..

5 JUDGE YOUNG: Okay.

6 JUDGE VON KANN: Okay.

7 MR. DOVE: I will agree to go first.

8 JUDGE VON KANN: Anybody have any problem
9 with that?

10 (No response.)

11 JUDGE VON KANN: All right. Mr. Dove, why
12 don't you go?

13 MR. DOVE: Good morning, Mr. Alexander.

14 THE WITNESS: Good morning.

15 MR. DOVE: My name is Ron Dove, and I'm
16 counsel for the Public Television claimants. I just
17 have a few questions.

18 THE WITNESS: Okay.

19 CROSS-EXAMINATION

20 BY MR. DOVE:

21 Q In your testimony, you state that KYW and
22 WJZ produced innovative, diverse, and informative

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1 programming. Is that correct?

2 A That's correct.

3 Q Would you agree that there are also Public
4 Television stations that produce innovative, diverse,
5 and informative programming?

6 A Yes, I would.

7 Q Would you agree that cable operators value
8 being able to provide their subscribers with
9 innovative, diverse, and informative programming?

10 A Yes.

11 Q Again, in general, why is that?

12 A To the extent that the public broadcaster
13 can again differentiate its product while focusing on
14 its core audience but differentiated enough so that
15 the outlying areas are also interested, it has appeal.
16 Again, I think as a general rule, public broadcasting
17 stations do that as well.

18 MR. DOVE: I have no further questions.

19 JUDGE VON KANN: Okay.

20 JUDGE YOUNG: Public Television has in its
21 direct case submission and will emphasize the value of
22 children's programming. Can we extrapolate from the

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1 exhibits and from your testimony that there is not a
2 high incidence of commercial TV producing specific
3 children's programming?

4 THE WITNESS: That would be my impression,
5 yes. The reason for that, Judge, is I believe that as
6 other venues have developed children's programming,
7 whether it's Nickelodeon Channel or others like that,
8 they have become specialists, if you will, in that.
9 And that's where a lot of those -- a lot of that
10 audience goes.

11 JUDGE YOUNG: And cartoons on the local
12 station, those are all syndicated, I take it?

13 THE WITNESS: That's correct.

14 JUDGE VON KANN: Well, let's see.

15 THE WITNESS: Actually, if I could
16 correct, syndicated or network. You know, the actual
17 network itself would generate a program at that point
18 or some cable.

19 JUDGE YOUNG: Okay. Thank you.

20 THE WITNESS: Sure.

21 JUDGE VON KANN: I guess if we are
22 following the order, it would be Canadian and Music.

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1 Any Canadian questions?

2 MR. SATTERFIELD: I don't think we have
3 anything.

4 JUDGE VON KANN: Any musical questions?

5 MR. LOPEZ: Just a few.

6 JUDGE VON KANN: Okay.

7 MR. LOPEZ: Good morning, Mr. Alexander.
8 My name is Jeff Lopez.

9 THE WITNESS: Good morning.

10 MR. LOPEZ: I am counsel to the Music
11 claimants.

12 CROSS-EXAMINATION

13 BY MR. LOPEZ:

14 Q Since we were talking about It's Academic
15 on your direct --

16 JUDGE VON KANN: Were you on there, too?

17 MR. LOPEZ: I wish I was. I wish I was.
18 Unfortunately, I grew up in California. I don't think
19 it got out there. That's it.

20 BY MR. LOPEZ:

21 Q I haven't seen the Baltimore one, but the
22 general format of that is they bring all the high

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1 school bands throughout that show. Is that right?

2 A It is a pretty big production. In
3 addition to the -- yes, they do bring sometimes the
4 band, sometimes the cheerleaders. It's a pretty
5 exciting kind of an environment that is created.

6 Q They have three schools that compete
7 against each other, right?

8 A That's correct.

9 Q And each of the bands come in from each of
10 the schools, right?

11 A Not necessarily all bring the band, but
12 often bands are represented.

13 Q Most of the time the bands are. And
14 they'll lead in and out of all the breaks on the show,
15 don't they?

16 A I can't say that 100 percent, but you're
17 right. Often that is the way that it works.

18 JUDGE YOUNG: Let the record reflect that
19 wasn't the case 35 years ago.

20 MR. LOPEZ: And you were just answering
21 questions, not playing anything.

22 JUDGE YOUNG: We did answer some questions

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1 about music.

2 BY MR. LOPEZ:

3 Q In fact, in virtually all of the locally
4 produced, station-produced programming, you use some
5 music in your programming, don't you?

6 A I would say yes, in general, that's
7 correct.

8 Q My question is, all of your news programs
9 have specific themes that open their broadcasts, don't
10 they?

11 A Yes. My hesitation is that over the
12 course of time, some have had jingles that bring in
13 the open and some don't. But in general, in a general
14 sense, yes, there is often music in the opens.

15 Q And you use music in those programs to
16 help identify the program to the audience. Is that
17 correct?

18 A When it's used, that's correct. It's a
19 part of the -- it helps to identify. That's correct.

20 Q Just as you use the term "Eyewitness News"
21 to brand your program, you use the music on your news
22 programs to brand them, don't you?

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1 A That's correct.

2 Q You indicated on direct that certain of
3 your programs have regional interest because there are
4 people who may want to come in either to watch a
5 sporting event or have interest in a larger city. Is
6 that right?

7 A That's correct.

8 Q And that would also apply to concerts that
9 were performed in the bigger cities. Is that correct?

10 A Sure.

11 Q And that is certainly covered on your news
12 broadcasts when you have big music coming in, for
13 example?

14 A Yes. It wasn't a focus, but that was
15 often a way that we would close out a newscast with a
16 little snippet of music from a show or some byte from
17 the -- sound byte from the show.

18 Q You spoke a little bit about how WJZ,
19 which is a CBS affiliate, was carried in areas cut by
20 cable systems, who also had other CBS affiliates. Is
21 that my understanding?

22 A That's correct.

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1 Q And specifically they carried the
2 Baltimore Ravens games, is that right, on WJZ?

3 A That's correct.

4 Q Do those other cable systems that carry JZ
5 also have the Ravens games or do they have other
6 football games on at that time?

7 A The cable systems that carry JZ would
8 carry the program that we had on. So if we had the
9 Ravens on, that's what they would carry. What other
10 additional programming on another cable channel, you
11 know, I can't speak to. I would think that they would
12 carry other games. But those cable systems that
13 carried WJZ carried our programs, which included
14 Baltimore Ravens, no Orioles.

15 Q Are there blackout rules that apply there?

16 A Sure.

17 Q So that if I were in --

18 A I'm sorry. Let me correct myself. The
19 blackout rule is a home-based rule.

20 Q Okay.

21 A So if the game was not sold out by a
22 certain time, the home game was blocked out. And if

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1 we weren't carrying it, then, therefore, the outlying
2 systems didn't get it either.

3 Q My question is, if the cable system had
4 two CBS affiliates and they were both carrying the
5 Ravens game, would it effectively be on both channels
6 in my system or would it only be on one and blacked
7 out on the other?

8 A Well, if the Ravens game happened to be a
9 nationally televised game, then it would be on --
10 conceivably on both unless it was blacked out in the
11 home rule area, which would mean that WJZ would not
12 carry it, but the other cable system that was carrying
13 -- the cable system that was carrying the other CBS
14 signal would carry it.

15 MR. LOPEZ: Okay. Thank you. That's all
16 I have.

17 JUDGE VON KANN: Okay. Mr. Olaniran, is
18 it you? Okay.

19 MR. OLANIRAN: Good morning, Mr.
20 Alexander. My name is Greg Olaniran. I am counsel
21 for program suppliers.

22 THE WITNESS: Good morning.

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1 MR. OLANIRAN: I will try not to keep you
2 too long, but I just have a few questions.

3 CROSS-EXAMINATION

4 BY MR. OLANIRAN:

5 Q I wanted to clarify something you said
6 about It's Academic. I'm not quite clear. Are you
7 saying for the purposes of this proceeding, is it
8 considered a local program or is it considered a
9 syndicated program?

10 A For purposes of this proceeding and also
11 the way that I believe we logged it at the station, it
12 is local programming.

13 Q I see. So, then, I would assume that to
14 the extent that you claim that it is local, that it
15 would be shown exclusively on one station, each
16 particular version of It's Academic. Is that what you
17 are saying?

18 A Yes. The version that we played, we were
19 the exclusive carrier, if you will, of that program in
20 the Baltimore market.

21 Q I see. Would that apply to It's Academic
22 on the other local commercial stations, if you know?

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1 A It was exclusive to a market, yes, if that
2 is your question.

3 Q My question was whether it was exclusive
4 to each station that carried that programming? In
5 other words, if KYW had its version of It's Academic
6 in '98 or '99, do you know whether or not that
7 particular version of it was exclusive to KYW?

8 A It would have been, yes.

9 Q Okay. These were, again, locally produced
10 in the station studio typically. And it was one to a
11 market. So the station that had it would have that
12 exclusively, correct.

13 Q As general manager, I believe you
14 indicated you were the most senior member of
15 management?

16 A That's correct.

17 Q Of the station?

18 A That's correct.

19 Q And as general manager for both WJZ and
20 KYW, you had responsibility also for non-network
21 programming?

22 A That's correct.

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1 some sense of the percentage of them that would likely
2 be owned by one of these large conglomerates?

3 I am trying to guess at how much
4 independence there really is among TV stations, how
5 much they truly are sort of free agents to go out and
6 negotiate their own deals or their part of a great big
7 conglomerate, like Viacom, which has other interests
8 and other fish to fry.

9 THE WITNESS: There is a fair amount of
10 independence among the stations, and I don't have a
11 sense of how -- what sort of percentage those would
12 be, though, at this point.

13 JUDGE GULIN: Is JZ considered an own-own?

14 THE WITNESS: Yes, it is.

15 JUDGE GULIN: An owner-operator?

16 THE WITNESS: Yes, it is.

17 JUDGE GULIN: It's not owned by CBS? It's
18 owned by Viacom?

19 THE WITNESS: Well, Viacom is the parent
20 company, which owns the CBS network and the owned
21 station groups, which television and radio are under
22 that as well.

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1 So Viacom is the parent company that has
2 multiple holdings below it. Among them are the TV
3 station group, radio station group, the network, some
4 cable networks, and other entities as well.

5 JUDGE YOUNG: So the station was not owned
6 by Viacom prior to Viacom buying CBS?

7 THE WITNESS: That is correct. The
8 station was in sort of a morphing, if you will, Judge.
9 It was owned by Group W. It then was merged with CBS.
10 And then CBS and Viacom merged. And that's how --
11 that's the current structure now.

12 BY MR. STEWART:

13 Q Viacom also owns the Paramount station
14 group?

15 A That's correct.

16 Q And is Viacom and its various subsidiaries
17 a major program supplier?

18 A Yes, it is.

19 Q I direct your attention to the document
20 entitled "Statement of Marcellus Alexander, Jr." and
21 the attached exhibit number 9. Do you have that?

22 A Yes, I do.

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1 Q Is this your testimony?

2 A Yes, it is.

3 Q Do you have any corrections to make?

4 A No.

5 MR. STEWART: I offer Mr. Alexander for
6 voir dire.

7 JUDGE VON KANN: Any voir dire by anyone?

8 (No response.)

9 MR. STEWART: Okay.

10 JUDGE VON KANN: Let me just sort of note
11 a passing interest in the last subject a little bit.
12 And to the extent the parties want to think about
13 addressing it at all in proposed findings or rebuttal
14 case, this does remind me a little bit of the
15 situation that Judge Gulin and I and Mr. Garrett
16 experienced in the webcaster case, where we had a
17 number of webcasters on one side of the aisle owned by
18 some of the same conglomerates that were owning folks
19 on the other side of the aisle and trying to think how
20 that implicates a hypothetical seller/buyer
21 marketplace transaction got a little bit interesting.
22 And it strikes me that here again, you have got

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1 somebody like Viacom, which is both a program
2 supplier, I guess, and in that sense in the position
3 of a seller.

4 And it also owns a bunch of TV stations
5 and in our hypothetical market would, thus, be in the
6 position of a buyer, admittedly, I guess, different
7 subdivisions or entities within Viacom, but it does
8 make this question of thinking through how a
9 hypothetical market would work in an increasingly
10 concentrated industry, where sometimes the same
11 overall holding company is owning both buyers and
12 sellers makes it a little interesting to think it
13 through.

14 I'm not sure that there's much that
15 anybody can do about it, but it does -- anyway, it's
16 something that I at least ruminate a little bit about
17 in trying to hypothecate this great marketplace we
18 have to think about.

19 Go ahead.

20 MR. STEWART: I might just say it's the
21 commercial television is here as a claimant as a
22 seller of programs, not as a buyer of programs.

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1 JUDGE VON KANN: Right. Right. I was
2 just thinking about Mr. Alexander earlier when he was
3 at some of these TV stations.

4 BY MR. STEWART:

5 Q First let's turn to exhibit 9 and the
6 second page. Now, KYW television is in Philadelphia,
7 Pennsylvania, correct?

8 A That is correct.

9 Q And while you were general manager at KYW,
10 did the station produce original programming?

11 A Yes, we did.

12 Q Looking at the second page of exhibit 9,
13 is this a list of programs that KYW produced that
14 year?

15 A Yes, it is.

16 Q Now, was KYW also carried as a distant
17 signal by cable systems in 1999?

18 A Yes.

19 Q Would you turn to exhibit 15, which is
20 attached to the testimony of Mr. DeFranco? Do you
21 have that?

22 A Yes, I do.

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1 Q First, do you understand that this is a
2 map of distant signal of KYW in 1999?

3 A Yes.

4 Q Could you explain what you understand this
5 map shows?

6 A My understanding is the map shows the red
7 dots to be cable systems that service those areas that
8 are on the map. And this is a map done by Mr.
9 DeFranco.

10 Q First of all, do you know what the yellow
11 area represents?

12 A Yes. The yellow area is the ADI, which
13 was the designation for that area in that particular
14 year.

15 Q What is an ADI?

16 A From an operator's perspective, it's the
17 primary focus of your audience, the primary focus of
18 your strategy.

19 Q It's the television market?

20 A That's correct.

21 Q Okay. And was the station, to your
22 knowledge, also carried by cable systems within that

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1 yellow area in 1999?

2 A Yes.

3 Q Was that carriage owned by a few cable
4 systems within that area?

5 A It was carried by all of the cable systems
6 in that area.

7 Q Okay.

8 JUDGE YOUNG: All systems within the
9 yellow?

10 THE WITNESS: Within the ADI, correct,
11 within the yellow.

12 JUDGE YOUNG: So they're not indicated on
13 this map, but your testimony is they did carry it?

14 THE WITNESS: That's correct.

15 JUDGE YOUNG: Your first ADI rank, is that
16 a national rank?

17 THE WITNESS: That is a national rank.

18 JUDGE YOUNG: The Philadelphia market is
19 the fourth biggest in the country?

20 THE WITNESS: That is correct.

21 BY MR. STEWART:

22 Q Do you know what the ranking reflects what

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1 measure they used to rank the market?

2 A It is a population-based ranking.

3 Q Now, looking at page 2 of your testimony,
4 you see there that towards the end of the page there
5 at the bottom that "The quality of the KYW newscast is
6 likely to be better than the newscasts available from
7 local stations in those markets," referring to the
8 markets indicated by red dots or the cable systems
9 indicated by red dots on exhibit 13. Is that right?

10 A That's correct.

11 Q What do you mean by that?

12 A Generally that's a statement about
13 resources. The larger markets tend to have more
14 revenue coming in, enabling the station to do a lot
15 more in terms of servicing that audience.

16 An example of that would be when we were
17 at war with Afghanistan or in Afghanistan. Our
18 station was able to send a reporter and a photographer
19 over because there were a number of people in the
20 service impacted in our area. So we were able to send
21 to Afghanistan a reporter and a photographer; whereas,
22 some of the smaller markets would not have the

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1 resources to do that.

2 And while network news and national news
3 would certainly bring that story home to the viewers,
4 there's nothing like having your own reporters put the
5 local context on those stories like that. So it
6 generally is a statement about resources that the
7 larger market has and the smaller ones do not.

8 Q Just looking at the map, those red dots up
9 in the upper left-hand corner, do you know what market
10 they are in?

11 A I'm sorry? Say that -- ask your question
12 again, please.

13 Q The red dots generally in the upper
14 left-hand corner, do you know what market they are in?

15 A What market? Well, the market's listed
16 there, Wilkes Barre-Scranton. Is that what you're --

17 Q Yes, right.

18 A Okay. I'm sorry. Yes. Wilkes-Barre,
19 Scranton is where those are, correct.

20 Q So is it your view that the newscasts
21 produced by KYW would be superior in quality in some
22 way to the newscasts produced in the Wilkes-Barre,

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1 Scranton market?

2 A Yes, but I want to be careful that they're
3 good newscasts that are produced by Wilkes-Barre,
4 Scranton stations. What we're talking about is the
5 difference in the ability to cover certain stories
6 better because of resources. So in those situations,
7 yes, we have an advantage by the larger market over
8 the smaller ones, correct.

9 Q And you also say on page 2, "The subject
10 matter of the KYW newscasts will also be of interest
11 to many of those cable subscribers." Why do you hold
12 that view?

13 A When a newscast is put together, of
14 course, the news of the day makes the foundation of
15 that broadcast. When I say "news of the day," I'm
16 referring to those stories that impact the large
17 audience, "Government official elected," "We're at war
18 in Iraq." Those are stories that are going to make up
19 a portion of that newscast.

20 Then there are discretionary stories, as
21 I will refer to them. A discretionary story could be
22 about health. It could be about education. It could

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1 be about parenting.

2 Those discretionary stories when done well
3 have appeal outside of the local marketplace. And we
4 always focused a fair amount of attention on those
5 discretionary stories in terms of attracting and
6 retaining audiences.

7 Q You also mentioned sports programming.
8 Why would cable subscribers up in Wilkes-Barre be
9 interested in sports programming from Philadelphia?

10 A Well, certainly the teams play in the city
11 that houses the stadium or houses the facility. But
12 they are supported and followed by the region. The
13 Philadelphia Eagles -- let me be more current.

14 The Philadelphia 76ers certainly play in
15 Philadelphia, but their following and the interest is
16 wide, has a wide area beyond the city. And so,
17 therefore, there is interest beyond just the City of
18 Philadelphia in the Philadelphia 76ers successor --

19 JUDGE YOUNG: But when you are talking
20 about that, I mean, the Sixers, as I understand it,
21 like right now they're not on a local station, but the
22 playoffs are going to be covered by a cable network or

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1 a national network. So what you would be doing would
2 be producing interviews or just follow-ups and things
3 like that?

4 THE WITNESS: Right. Well, actually, the
5 76er games are covered in part by a local station.
6 It's the UPN station in Philadelphia. They don't
7 carry all of the games. There are some that go to
8 cable.

9 But, in addition to that coverage,
10 carriage of the games, stations like KYW would do
11 specials. We would certainly do extended reports as
12 they make their playoff margins in the newscast. And
13 this is information that we can give to those outlying
14 areas that they wouldn't have the same kind of access
15 to in those outlying areas.

16 BY MR. STEWART:

17 Q And turning back to page 3 of your
18 testimony, you in the first full paragraph identify or
19 discuss briefly a couple of the sports programs that
20 KYW produced in 1999?

21 A Yes.

22 Q What are those programs?

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1 A Game Day, Sports Wrap. Game Day was the
2 show that preceded the NFL games. And what we did is
3 we had our local sports anchor talk with that week, in
4 advance of that week's games, with coach, players,
5 talked about the team, what was the strategy, and any
6 points of interest to the sports fans that could be
7 going in that special.

8 Sports Wrap was an 11:30 news cap, news
9 cap, if you will, sort of summarized the week's
10 sports. And often on that show, we had players come
11 in and talk with the sports anchors about whatever had
12 been going on that particular week. Again, high
13 interest not only to the people in our ADI but also in
14 the outlying areas.

15 Q Now, further on page 3, you also talk
16 about what you call stories that "fall between local
17 and national." Do you see that?

18 A Yes, I do.

19 Q What do you mean by that?

20 A Those are stories that could be -- that
21 are not quite national, big enough to be national, and
22 certainly too big to be local. The example I cite

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1 here is an Ira Einhorn story, which got some national
2 attention because of the nature of this particular
3 trial, but it's not one that is going to be followed
4 by the network news. And certainly the outlying areas
5 would not send a reporter in to cover it.

6 We, however, being in the City of
7 Philadelphia, where the trials were, had coverage
8 because our core audience, our ADI audience, was very
9 interested in it, as were those people in the region
10 or the outlying areas.

11 Q Turning to your tenure at WJZ and looking
12 at the first page of exhibit 9, is this a list of
13 programs produced by WJZ in 1998?

14 A Yes, it is.

15 JUDGE VON KANN: Can I ask you a question
16 about one of those programs?

17 THE WITNESS: Sure.

18 JUDGE VON KANN: The third from the
19 bottom, --

20 JUDGE YOUNG: I was going to ask the same
21 question.

22 JUDGE VON KANN: -- It's Academic.

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1 THE WITNESS: Yes.

2 JUDGE VON KANN: Now, I happen to know
3 there's an It's Academic here in Washington, too. Is
4 that something that lots of different communities
5 have?

6 THE WITNESS: Yes, it is.

7 JUDGE VON KANN: What's the deal on that?

8 THE WITNESS: The deal on that, Judge --

9 JUDGE VON KANN: I think I was on it when
10 I was in high school. I was very interested. You,
11 too?

12 JUDGE YOUNG: We were the New York team.

13 THE WITNESS: It is an extremely valuable
14 program, as you can attest. It is a program that is
15 syndicated, if you will. So in various areas, the
16 makeup of the contestants draw from the region that
17 they are in. So there was a Baltimore version of It's
18 Academic and the Washington, D.C. version, I believe,
19 the one you are --

20 JUDGE YOUNG: The New York version.

21 THE WITNESS: The New York version and
22 other places as well.

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1 JUDGE YOUNG: Now, if it's syndicated,
2 it's not part of your claim of --

3 THE WITNESS: There's a local production
4 element that is involved in that. We were helping the
5 producers of that show line up the schools. We
6 helped. In fact, it was produced in our station. The
7 actual set was physically in the WJZ station. So we
8 were a part of the production of that for our
9 particular market.

10 BY MR. STEWART:

11 Q And is the It's Academic that appeared on
12 WJZ the identical program that appeared on a station
13 in Washington or a station in New York?

14 A The only things that were identical, Mac
15 McGarry I think his name is, I think he has been the
16 host for --

17 JUDGE VON KANN: Does he travel around to
18 these different cities to do this?

19 THE WITNESS: Yes. And it's -- that is a
20 consistent part of it. I believe the sets were
21 similar, if not identical, but a number of
22 similarities in those programs. And they were very,

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1 very well-received because education was one of those
2 hot buttons that I had as an operator. And this got
3 a chance to get local schools involved in something
4 that we think is very important.

5 JUDGE YOUNG: Plus, you guarantee every
6 kid's family, extended family, is going to watch them.

7 THE WITNESS: That's exactly right,
8 exactly right.

9 JUDGE VON KANN: You said syndicated? I
10 had thought -- this is showing my ignorance -- that
11 syndicated meant the identical, same broadcast being
12 seen in multiple locations. If McGarry does one in
13 Baltimore and then does another in Washington and
14 another in New York, that's different. That's not
15 what I had in mind about syndication. Is that a kind
16 of syndication?

17 THE WITNESS: Correct. Your understanding
18 of syndication is accurate, but it generally is the
19 same show throughout a particular area.

20 This show -- and I'm trying to think of a
21 different name. It wasn't fully syndicated across the
22 country. It was more regional, but it was a

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